

**Responses of Gloria M. Navarro**  
**Nominee to the U.S. District Court for the District of Nevada**  
**to the Written Questions of Senator Jeff Sessions**

1. **At your hearing, I asked you whether you believed that the death penalty violates the Constitution as being “cruel and unusual.” You testified that you had “not expressed an opinion on that,” but then stated “I’m not sure that I have a particular opinion on that. There’s a case-by-case basis that, in my personal view, if I was sitting on a jury, I would have to decide.”**

- a. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution?**

Response: The U.S. Supreme Court has upheld the constitutionality of the death penalty except in specific limited circumstances and if confirmed, I would follow the Court’s precedent and apply the law as required by the doctrine of *stare decisis*.

- b. **Please explain what you meant by “case-by-case basis.”**

Response: Section 3593(e) of the Federal Death Penalty Act requires that a judge must impose a sentence of death when it is recommended by the jury; that is why I stated that, “at the end of the day... the juries are the individuals who have to decide and pass judgment.” If confirmed as a judge, I would of course follow this law. In response to the question about my personal belief, if I were a member of a jury, I would likewise follow the law and not impose the death penalty automatically but rather review the existence of the aggravating/mitigating factors presented to me and determine the appropriateness of the death penalty for each of the defendants on a “case-by-case basis.”

- c. **Justice Marshall maintained that the death penalty was always unconstitutional. Do you agree or disagree? Please explain your answer.**

Response: The U.S. Supreme Court has upheld the constitutionality of the death penalty and if confirmed, I would follow the Court’s precedent as required by the doctrine of *stare decisis*.

- d. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: The U.S. Supreme Court has upheld the constitutionality of the death penalty as an acceptable form of punishment except in certain limited circumstances and if confirmed, I would follow the Court’s precedent and apply the law as required by the doctrine of *stare decisis*.

2. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on “evolving standards of decency” in holding that capital punishment for any murderer under the age of 18 was unconstitutional.**

- a. **Do you agree with Justice Kennedy’s analysis?**

Response: Whether or not I agree with Justice Kennedy’s analysis, the doctrine of *stare decisis* requires that I accept the U.S. Supreme Court’s decision and if I were to be confirmed, I would apply its analysis.

- b. **How would you determine what constitutes “evolving standards of decency”? What factors would you consider?**

Response: After the *Roper* decision, the U.S. Supreme Court in *Kennedy v. Louisiana*, explained that the determination is guided by “objective indicia of society’s standards, as expressed in legislative enactments and state practice with respect to executions. Consensus is not dispositive, however. Whether the death penalty is disproportionate to the crime also depends on the standards elaborated by controlling precedents and on the Court’s own understanding and interpretation of the Eighth Amendment’s text, history, meaning, and purpose.” 128 S.Ct 2641, 2649 – 2651 (2008). If confirmed, I would follow Supreme Court precedent as required by the doctrine of *stare decisis* and apply the Court’s analysis.

- c. **Do you think that a judge could conclude that “evolving standards of decency” dictate that the death penalty is unconstitutional in all cases? Please discuss what factors you believe would be relevant to the judge’s analysis.**

Response: No. The U.S. Supreme Court has held that the death penalty is a constitutional punishment. Therefore, it would not be appropriate for a District Court judge to utilize the “evolving standards of decency” analysis or any other analysis to overrule a decision made by the U.S. Supreme Court. If confirmed, I would accept and follow Supreme Court precedent.

3. **In *Kennedy v. Louisiana*, 129 S. Ct. 1 (2008), the Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. The majority opinion was based, in part, on the fact that 37 jurisdictions (36 states and the federal government) did not allow for capital punishment in child rape cases. In reality, however, Congress and the President specifically authorized the use of capital punishment in cases of child rape under the Uniform Code of Military Justice (UCMJ) in the National Defense Authorization Act of 2006, as reported first by Col. Dwight H. Sullivan in his blog and later by the *New York Times*.**

- a. **Given the heinousness of the crime, as well as the information on the federal government’s codification of capital punishment in child rape cases under**

**the UCMJ, is it your opinion that *Kennedy v. Louisiana* was wrongly decided? If not, why?**

Response: Regardless of my own personal opinion, the doctrine of *stare decisis* requires that I accept this U.S. Supreme Court decision and if I were to be confirmed, I would follow and apply the Court's decision.

- b. Following the Supreme Court's decision, President Obama announced at a press conference: "I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime." Do you agree with that statement? Why or why not?**

Response: I do agree that the rape of a small child is a heinous crime, however, the doctrine of *stare decisis* requires that I accept the U.S. Supreme Court's decision and if I were to be confirmed, I would follow and apply this decision.

- 4. In a 1994 newsletter published by the Office of the Federal Defender for the District of Nevada, you encouraged attorneys representing non-English speaking defendants to "[a]lways remember that the cultural and historical background of these defendants, not just the language barriers, leave them more vulnerable to police pressures than the average individual."**

- a. Please explain what you meant by this statement.**

Response: The purpose of the newsletter was to educate Criminal Justice Act lawyers of the status of the law and the article was a summary of relevant case law provided to assist them to effectively represent clients with a different cultural or historical background. The statement referenced above was a reminder to attorneys that in addition to language barriers, courts had recognized other vulnerabilities of this particular class of defendants.

- b. Do you believe that the law should be applied differently to people based on their "cultural and historical background"? Please explain your answer.**

Response: No. The law should be applied consistently to provide equal justice for all people.

- c. Do you think that it is ever proper for judges to indulge their own policy preferences in determining what the law means?**

Response: No

- i. If so, under what circumstances?**

Response: See Response above.

5. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

**“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

- a. **While I understand that you cannot know what President Obama may or may not have meant by this statement, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote? Why?**

Response: If empathy is defined as not just the willingness but also the ability to understand and consider several points of view and keep an open mind, then I believe I do fit President Obama’s criteria.

- b. **During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: I agree with Justice Sotomayor’s statement.

- c. **What role do you believe empathy should play in a judge’s consideration of a case?**

Response: A judge should be able to understand and consider the views presented, keeping an open mind before applying the law to the facts of the case.

- d. **Do you think that it’s ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?**

Response: No

- i. **If so, under what circumstances?**

Response: See Response above.

6. **Please describe with particularity the process by which these questions were answered.**

Response: I received these written questions from the Department of Justice (DOJ). I reviewed my materials referenced in the questions, drafted my responses, discussed the answers with representatives of the DOJ and then finalized my responses.

7. **Do these answers reflect your true and personal views?**

Response: Yes.