

**Senator Chuck Grassley
Questions for the Record**

**Luis Felipe Restrepo
Nominee, U.S. Circuit Judge for the Third Circuit**

- 1. How are you preparing to preside over matters at the appellate level? Please also explain how your experience at the District Court level has prepared you to be an appellate judge.**

Response: My tenure as a District Court Judge, United States Magistrate Judge and practicing attorney have prepared me well to preside over matters at the appellate level. Prior to issuing an opinion I carefully read the written submissions, review the statutes and/or case law cited by parties, listen to any argument presented, consider the facts relevant to the disputed issue(s) and do independent research of the statutes and/or case law at issue. As a federal trial court judge I have also gained much experience in properly making the record and addressing all issues presented to me by the parties.

In an effort to prepare myself for the role of a Circuit Judge, should I be confirmed, I have sought out the advice of judges that currently serve as Circuit Judges on topics such as the effective administration of the appellate docket and collaboration among judges and with the Circuit staff.

- 2. In a 1991 article regarding the efficacy of providing interpreters for defendants you discussed a Supreme Court case, *Hernandez v. New York*, U.S. 111 S. Ct. 1859 (1991), which held that a peremptory strike can be based on the fact that a potential juror speaks the language that will be translated out of a concern that the listener will question the translation. You did not agree with the Court's decision stating, "...this almost guarantees the impaneling of a jury with little understanding of the defendant's culture." If confirmed, would you have any trouble following *Hernandez v. New York*? Please explain.**

Response: *Hernandez v. New York* is established Supreme Court precedent. During my 9 years of service as a federal judge I have always followed the holdings of Supreme Court opinions and would have no trouble doing so should I be confirmed to the Court of Appeals.

- 3. While in private practice, you represented Oscar Antonio Grande, a member of the notoriously violent gang known as Mara Salvatrucha or MS-13, in a federal capital murder trial. Grande was charged with and convicted of killing Brenda Paz, a 17 year-old government witness who was 16 weeks pregnant at the time. The murder was**

ordered by MS-13 to silence Paz’s cooperation with the government. According to testimony, during the attack in which she was stabbed sixteen times, Paz asked “why” to which the attackers replied “because you’re a rat.” After finding Grande guilty of murder and four other counts, the jury could not reach a unanimous decision with respect to capital punishment, thus defaulting to a sentence of life without the possibility of release. Following this jury decision, you were described as expressing joy or elation for the decision. (“expresó su alegría por la decision”). I recognize you were zealously defending your client. Is there anything in your personal views that would preclude you from upholding a sentence of death if the law required? If so, please explain why.

Response: I believe the quote referenced in this question should be read to note that Mr. Grande expressed his joy or elation for the decision. In any event, I can assure the Committee that nothing in my personal views would preclude me from upholding a sentence of death if the law required such a sentence.

- 4. In questions for the record posed during your nomination to be District Court Judge, you were asked to comment on a quote from one of your articles, “Where it becomes important is to the people who use the system. If all they see day after day is people on the bench who can’t identify with their language or color, it is not healthy.” Specifically, you were asked how diverse should a bench be to be considered healthy. You answered, “Our justice system overall benefits when it reflects the demographics of the community it serves.” Please provide a bit more detail.**

- a. Why do you believe that if a judge does not share the same language or color of a plaintiff or defendant, it is not “healthy” for the judicial system?**

Response: I do not believe that a judge need share the same language or color of a plaintiff or defendant. I do however believe that organizations that serve the public, such as the federal courts, do benefit from diversity in terms of demographics and professional experience. Diversity in terms of professional experience and demographics promotes confidence in the system and enhances the legitimacy of the organization.

- b. Do you believe that a judge’s gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: No. A judge should apply relevant precedent to the facts established in the case regardless of the judge's gender, ethnicity or other demographic factor.

- 5. Do you believe the original intent of the Framers of the Constitution is the primary guiding point for interpreting and applying modern statutes and regulations to constitutional questions? Are there other interpretive techniques that you use?**

The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) applied original public meaning to their interpretation of the Second Amendment. I would faithfully apply *Heller* and all other binding precedent to issues of constitutional interpretation.

- 6. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is a firm commitment to following the rule of law. I believe that during my 7-year term as a United States Magistrate Judge and my 2-year tenure as a United States District Judge I have demonstrated that I possess this attribute.

- 7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: In my view, the appropriate temperament of a judge includes the qualities of impartiality, fairness, respectfulness, humility, integrity and the commitment to the rule of law. I believe that I have met these standards as both a United States Magistrate Judge and a United States District Judge and that I would continue to meet these standards if confirmed as a United States Circuit Judge.

- 8. In general, Supreme Court precedents are binding on all lower federal courts. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I am committed to following the precedent of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

- 9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In cases involving statutory interpretation, I would first turn to the text of the statute. In cases involving Constitutional interpretation I would first turn to the text of the Constitution. If the text is not clear I would turn to analogous rules of construction contained in Supreme Court and Third Circuit precedent. Where such precedent is not available I would examine analogous precedent from other Supreme Court and Third Circuit decisions.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I must and would apply the decision(s) of the Supreme Court and the Third Circuit. I would follow such precedent regardless of my own judgment or personal beliefs.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Only in a properly presented case or controversy and if there were no construction of the statute that would preserve its constitutionality would it be appropriate for a federal court to declare a statute enacted by Congress unconstitutional. I would follow Supreme Court and Third Circuit precedent in making such a determination.

12. Please describe your understanding of the workload of the Third Circuit. If confirmed, how do you intend to manage your caseload?

Response: My understanding is that the workload of the Third Circuit is substantial. I will work with my colleagues, law clerks and Circuit staff to ensure the prompt disposition of motions and the efficient issuing of opinions. I would also seek out the advice of judges who have experience as appellate judges and take advantage of resources available to the federal judiciary from the Administrative Office of the U.S. Courts.

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.

Response: Unless mandated to do so by the Supreme Court or the Court of Appeals it is not proper for judges to rely on foreign law or the view of the “world community” in determining the meaning of the Constitution.

14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I am confident that my record as a United States District Court Judge for 2 years and record as a United States Magistrate Judge for 7 years can provide the Committee with assurance and evidence that, if confirmed as a Circuit Judge, my decisions will continue to be grounded in precedent and the text of the law rather than any underlying political ideology or motivation.

- 15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I am confident that my record as a United States District Court Judge and a United States Magistrate Judge can provide the Committee with assurance and evidence that, if confirmed as a Circuit Judge, I will continue to put aside any personal views and be fair to all who appear before me.

- 16. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: I would look to Fed. R. App. P. 35(a) in deciding when an appellate court *en banc* should overturn precedent within the Circuit. Rule 35(a) notes that: *en banc* consideration is necessary to secure or maintain uniformity of the court's decisions; or the proceeding involves a question of exceptional importance. I would also consider the applicability of any Supreme Court precedent relevant to the issue.

- 17. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: I read the written submissions of the parties, review the cases and statutes cited by the parties, listen and consider any oral argument presented, do independent research of the statutes and case law at issue and apply the law as set forth in the decisions of the Supreme Court and the Third Circuit to the facts of the case.

- 18. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court, if confirmed?**

I do believe that collegiality is an important element of the work of the Circuit Court. Should I be confirmed I would approach colleagues with respect, listen carefully and consider their position on issues with an open mind.

19. At a speech in 2005, Justice Scalia said, “I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says.”

a. Do you agree with Justice Scalia?

Response: Although I am not familiar with Justice Scalia’s 2005 speech or the context of the quote, I do agree with the sentences quoted.

b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?

Response: No.

20. Do you think judges should consider the “current preferences of the society” when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?

Response: Unless directed to do so by the Supreme Court, I do not think judges should consider the “current preferences of the society” when ruling on constitutional challenges or when considering challenges to Supreme Court or Circuit precedent.

21. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: My judicial philosophy is to apply the Constitution to all statutes equally based on the text of the Constitution and binding precedent of the Supreme Court and Third Circuit.

22. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

Response: Unless directed to do so by the Supreme Court or Circuit precedent, a judge should not consider the evolving norms and traditions of our society in interpreting the written Constitution.

23. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

Response: In *Locke v. Davey*, 540 U.S. 712, 719 (2004) the Supreme Court recognized that: “The Religion Clauses of the First Amendment provide: ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.’” The Court recognized that “the Establishment Clause and the Free Exercise Clause are frequently in tension [but that] ‘there is room for play in the joints.’” See also *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

24. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I do not agree with the perspective that the Constitution is a “living” document that is constantly evolving as society interprets it.

25. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The Supreme Court has recognized a right to privacy in several contexts, for example, in the right to be free from unreasonable searches and seizures under the 4th Amendment, see *Katz v. United States*, 389 U.S. 347 (1967), and *United States v. Dunn*, 480 U.S. 294 (1987), and the privacy interest in the freedom of association under the 1st Amendment, see *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). Regardless of any personal beliefs I may have, I apply Supreme Court and Circuit precedent to the facts of the case.

a. Where is it located?

Response: Please see response above.

b. From what does it derive?

Response: Please see response above.

c. What is your understanding, in general terms, of the contours of that right?

Response: My understanding is that the contours of the right to privacy are defined by Supreme Court precedent, which I apply to the facts of each specific case.

26. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the “penumbras” and “emanations” of the Constitution.

- a. **Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by “reading between the lines”?**

Response: As a District Judge I do not read between the lines and will not do so if confirmed as a Circuit Judge

- b. **Is it appropriate for a judge to go searching for “penumbras” and “emanations” in the Constitution?**

Response: No, as a District Judge I do not search for penumbras and emanations in the Constitution and will not do so if confirmed as a Circuit Judge.

27. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

- a. **When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?**

Response: Appellate review is restricted to the original papers and exhibits filed in the district court, transcripts of proceedings, if any, and certified copy of the docket entries prepared by the district clerk. See Fed. R. App. P. 10.

- b. **When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?**

Response: It would only be appropriate for appellate judges to base their opinions on psychological and sociological scientific studies if the studies had been appropriately presented to the District Court consistent with Supreme Court and Circuit precedent and conforming to the Federal Rules of Evidence and the Federal Rules of Appellate Procedure.

28. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: Neither *District of Columbia v. Heller*, 554 U.S. 570 (2008) nor *McDonald v. City of Chicago*, 554 U.S. 570 (2008) identify the specific standard of scrutiny appropriate to a Second Amendment challenge to a federal or state gun law. The Third Circuit, interpreting *Heller*, has held that some heightened scrutiny is required and that rational

basis is not sufficient. *See Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013), and *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010). As a District Court judge in the Third Circuit, I follow such precedent and would follow subsequent Supreme Court and Third Circuit precedent relevant to this issue.

29. What would be your definition of an “activist judge”?

Response: An “activist judge” has an agenda and is result driven notwithstanding binding precedent from superior courts.

30. What weight should a judge give legislative intent in statutory analysis?

Response: The role of the courts in interpreting a statute is to give effect to Congress’s intent. *See Negonsott v. Samuels*, 507 U.S. 99 (1993). Because it is presumed that Congress expresses its intent through the ordinary meaning of its language, every exercise in statutory interpretation begins with an examination of the plain meaning of the statute. *See Mansell v. Mansell*, 490 U.S. 581 (1989).

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

Response: The questions were provided to me by personnel from the Department of Justice on the evening of June 17, 2015. I prepared responses to the questions and reviewed them with a representative of the Office of Legal Policy of the Department of Justice, then asked that my responses be submitted to the Senate Judiciary Committee.

32. Do these answers reflect your true and personal views?

Response: These answers do reflect my true and personal views.