

WRITTEN STATEMENT OF THE HISPANIC NATIONAL BAR ASSOCIATION IN SUPPORT OF THE CONFIRMATION OF THE HONORABLE SONIA SOTOMAYOR AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

SUBMITTED ON JULY 15, 2009 BY RAMONA E. ROMERO, NATIONAL PRESIDENT



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I. BACKGROUND AND INTRODUCTION

My name is Ramona E. Romero and I am the National President of the Hispanic National Bar Association ("the HNBA"). We are grateful to Chairman Leahy, Ranking Member Sessions and the rest of the Senate Judiciary Committee (the "Committee") for affording the HNBA the honor of testifying in support of the confirmation of Judge Sonia Sotomayor as Associate Justice of the Supreme Court of the United States.

While the HNBA is proud that Judge Sotomayor is a Latina, we support her confirmation because she is unquestionably well-qualified under the objective and subjective standards that have traditionally been applied to Supreme Court nominees. We base our endorsement on our due diligence evaluation of her credentials, judicial record, and reputation. Judge Sotomayor offers an unquestionable integrity, temperament, commitment to equal justice and record of service to the American public and the Hispanic community. Moreover, Judge Sotomayor has extraordinary academic credentials, a varied professional background and more judicial experience than any of the current members of the Supreme Court at the time of confirmation. In addition, she brings a practical understanding of how people and businesses interact with the legal system derived from her years as a prosecutor and private practitioner.

The HNBA is a nonprofit, national voluntary bar association that represents the interests of all attorneys, judges, law professors, legal assistants, and law students of Hispanic descent in the United States and Puerto Rico. The HNBA has Regional Presidents in every region of the country and 37 affiliated bar associations in 22 states. While Latinos in the legal profession come from diverse personal backgrounds and political persuasions, the HNBA is strictly non-partisan and does not represent a particular ideology. It was founded in 1972 to promote equal justice for all Americans by advancing the participation of Hispanics in the legal profession. The HNBA also serves as the voice of the broader Hispanic community on issues that significantly impact the interactions of Latinos and the legal system.

The HNBA has been looking forward to this moment for decades. For a variety of reasons, including our interest in preserving public trust in the Supreme Court, the HNBA has long advocated for the appointment of a Justice of Hispanic decent. Today, I am accompanied by nine former HNBA National Presidents – Mari Carmen Aponte, Lillian Apodaca, Lorenzo Arredondo, Dolores Atencio, Jimmie Gurule, Mary Hernandez, Carlos

Ortiz, Jimmie Reyna and Robert Ruiz. They and all other living HNBA past presidents unanimously support Judge Sotomayor's confirmation. All former HNBA National Presidents have dedicated much of their lives and volunteered countless hours to fostering a legal profession that affords equal opportunity to Hispanics and all Americans. All have worked to educate the public on the importance of a diverse judiciary and on the practical, intellectual, and symbolic significance of a Hispanic presence on the Supreme Court. Accordingly, I take this opportunity to publicly acknowledge their work and to thank them on behalf of the American people. Other HNBA representatives here today include Román Hernández, the HNBA's President-Elect, Professor Jenny Rivera, and María González Calvet, who is acting as the HNBA's counsel in connection with this hearing.

II. HNBA'S PERSPECTIVE ON THE JUDICIARY AND APPROACH TO JUDGE SOTOMAYOR'S NOMINATION

As the national voice of the Hispanic legal community, the HNBA has sought to promote a fair, independent and *diverse* judiciary. The benefits of diversity in all settings are broadly recognized in our society. For example, as Justice O'Connor has noted "effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized." All Americans benefit from judicial deliberations that include diverse perspectives because they increase the likelihood of better decisions and a stronger jurisprudence more likely to deliver on respect for the rule of law and on the promise emblazoned on the façade of the Supreme Court building—"equal justice under law."

For decades, the HNBA has led the advocacy in support of Hispanic representation on the federal bench, including the Supreme Court. It often conducts peer reviews of judicial candidates and, when appropriate, issues endorsements. While its focus is on Hispanics in the judiciary, the HNBA has evaluated and/or endorsed candidates of all races and political persuasions. For example, the HNBA testified before this Committee in support of the nominations of Associate Justices Kennedy, Souter, Ginsburg and Breyer. Similarly, the HNBA publicly endorsed Miguel Estrada when he was nominated to the D.C. Circuit on the basis of his qualifications and prepared an extensive written evaluation of Chief Justice Roberts that praised his integrity and character, professional experience, scholarship, communication skills, and judicial temperament.

The supporting statement signed by all 27 living former HNBA National Presidents, along with the cover letter forwarding it addressed to the Senate Judiciary Committee, are attached as Exhibit A.

We thank Ms. Calvet and her law firm, Morgan Lewis & Bockius LLP, for their long-term support of the HNBA's efforts related to the Supreme Court of the United States.

³ Gutter vs. Bollinger, 539 U.S. 306, 332 (2003).

In November 2008, shortly after the Presidential election, the HNBA wrote to President Obama to encourage the nomination of Latinos to the federal judiciary and to consider the historic nomination of a Hispanic to the Supreme Court. The HNBA also constituted its Special Committee on the Supreme Court of the United States ("Supreme Court Committee") to focus once again on identifying and evaluating potential Hispanic candidates for the Court. The Committee and the HNBA's current national leadership worked to educate the public and the Administration on the need for and importance of Hispanic representation on the Supreme Court.

On May 13, 2009, the HNBA released a bi-partisan "Long List" of 82 Latinos on the federal bench and on state courts of last resort compiled by the Supreme Court Committee. The HNBA did so in order to highlight for the Administration and for all Americans that there exists an impressive pool of Hispanic legal talent that President Obama could consider when selecting a replacement for Justice Souter. Judge Sotomayor was, of course, on that list.

The HNBA, like most Americans, reveled with pride and enthusiasm on May 26, 2009, as President Obama announced that he had selected Judge Sotomayor as his first Supreme Court nominee. The HNBA was already familiar with Judge Sotomayor's impressive background and jurisprudence. She was on a "Short List" of eight potential Supreme Court nominees that the HNBA submitted to President Bush in 2005 after conducting substantial due diligence on their backgrounds and careers. We also reviewed her credentials and endorsed her when she was nominated for the U.S. District Court for the Southern District of New York and for the Court of Appeals for the Second Circuit. Finally, she has been a distinguished member of the Hispanic legal community, and our organization honored her as its Judge of the Year in 2004 and also as its Latina of the Year (Judiciary) in 2005.

Notwithstanding our familiarity with her record and our prior evaluations and endorsements, the Supreme Court Committee once again reviewed Judge Sotomayor's candidacy after her historic nomination.⁴ Our most recent analysis of her judicial record relied on appraisal criteria approved by the HNBA Board of Governors in 2001. Among the factors considered are exceptional professional competence, intellect, character, reputation for integrity, temperament, commitment to equal justice and record of service to the American public and the Hispanic community. In addition, the Committee

We thank the members of the HNBA's Supreme Court Committee for their extraordinary contribution to this effort. The HNBA Supreme Court Committee is co-chaired by Carlos Ortiz, General Counsel of Goya Foods, Inc. and HNBA National President 1992-1993 and Robert Raben, founder and President of The Raben Group. Its members are Michael A. Olivas, Houston, TX, HNBA Law Professor Sect Chair Emeritus, 1987-2009; Gilbert F. Casellas, Round Rock, TX, HNBA Past President, 1984-1985; Mark S. Gallegos, Miami, FL, HNBA Past President, 1988-1989; Dolores S. Atencio, Denver, CO, HNBA Past President, 1991-1992; Mary T. Hernandez, San Jose, CA, HNBA Past President, 1994-1995; Gregory A. Vega, San Diego, CA, HNBA Past President, 1997-1998; Lillian R. Apodaca, Albuquerque, NM, HNBA Past President, 1998-1999.

commissioned a group of law professors to review and analyze approximately one hundred of Judge Sotomayor's key cases with particular emphasis on areas of law and issues of concern to Latinos in the United States. Finally, the Committee reviewed many of Judge Sotomayor's speeches and writings.

Based on the Supreme Court Committee's review of her record, the HNBA is confident that Judge Sotomayor is extraordinarily well-qualified to serve as a Justice of the Supreme Court. We respectfully urge the Judiciary Committee to promptly recommend her confirmation to the full Senate. We also respectfully urge the Senate to recognize and honor Judge Sotomayor's extraordinary credentials, service to the American people, and remarkable personal history and vote in favor of confirmation.

III. SUPPORT FOR THE CONFIRMATION OF JUDGE SOTOMAYOR

A. Personal and Educational Background

The Honorable Sonia Sotomayor embodies the attributes the HNBA looks for in a nominee to the Supreme Court: extraordinary intellect, commendable credentials, principled jurisprudence, integrity, an unrivaled work ethic, a clear commitment to the fair and impartial administration of justice, and a demonstrated dedication to serving the American people and the Hispanic community. Given her personal history, her achievements are both a tribute to her and to the best our great country has to offer.

Judge Sotomayor is a 55 year old American of Puerto Rican descent and raised in the humble environment of a low income public housing project in the Bronx, New York. Judge Sotomayor's father was a factory worker with a third grade education. He died when she was only nine years old. Her mother worked six days a week as a telephone operator and as a licensed practical nurse in order to provide for Judge Sotomayor and her brother, now a doctor. Despite these obstacles, Judge Sotomayor excelled at an early age, beginning her lifelong journey from the South Bronx to the halls of justice in New York and Washington D.C. This compelling story is an extraordinary example of what is possible in our great country—The Land of Opportunity—with hard work, perseverance and a belief in the promise of America. Hers is a story that instills a sense of pride and patriotism in each of us.

Judge Sotomayor continued to demonstrate excellence at every stage of her life and career. She graduated as the valedictorian of Cardinal Spellman High School in the Bronx. After earning a scholarship from Princeton University—one of the most prestigious schools in the country--she went on to graduate with the highest possible academic honors, receiving her Bachelor of Arts *summa cum laude* and Phi Beta Kappa. She was a co-winner of Princeton's top academic prize for scholastic excellence and service to the University. She attended Yale Law School—another premiere institution—and again excelled, serving as an editor of the Yale Law Journal and as a Managing Editor of the Yale Law Studies in World Public Order.

B. Professional Experience (Non-Judicial)

Over her thirty-year legal career, Judge Sotomayor has acquired professional experience that is broad, deep and well-rounded. After she graduated from Yale Law School in 1979, Judge Sotomayor became an Assistant District Attorney in the Manhattan District Attorney's Office under District Attorney Robert M. Morgenthau. During her five years there, A.D.A. Sotomayor prosecuted significant criminal cases including murders, robberies, child abuse, police misconduct and fraud cases. According to Mr. Morgenthau,

...she was a tough and effective prosecutor....Within a short time she had come to the attention of trial division executives as someone who was a step ahead of her colleagues, one of the brightest, an immediate standout who was marked for rapid advancement. ⁵

In 1984, Judge Sotomayor left the District Attorney's office and joined the law firm of Pavia & Harcourt as an associate. She was admitted into partnership four years later. Her practice focused primarily on general civil litigation, with emphasis on protecting her client's intellectual property rights. Former colleagues at the firm have described her as "very skilled," a quick learner, exceptionally hard-working, and immediately impressive.

After becoming an appellate jurist, Judge Sotomayor co-taught a trial and appellate advocacy course at New York University Law School from 1998 through 2007. She also taught an appellate advocacy course at Colombia Law School from 1999 through the recent past.

C. Judicial Experience

Judge Sotomayor has spent seventeen years on the federal bench, six as trial judge and eleven as an appellate judge. She will bring to the Supreme Court more federal judicial experience than any other Justice in the last 100 years. Moreover, her experience as a trial judge will fill a void left by the retirement of Justice Souter who was the only member of the current Court with that prior experience.

In 1991, President George H.W. Bush nominated Judge Sotomayor to serve as a federal judge on the U.S. District Court for the Southern District of New York on the

Morgenthau, R., *Those Labeling Sonia Sotomayor a Radical Don't Know Her at All*, New York Daily News, May 28, 2009.

See, e.g., Sloan, Karen, *Sotomayor's Civil Practice was with a Small, but Specialized, Firm*, The National Law Journal, May 28, 2009; Richburg, Keith, *N.Y. Federal Judge Likely on the Short List*, The Washington Post, May 7, 2009.

recommendation of New York Senior Senator Daniel Patrick Moynihan (D-NY) and with the support of Senator Alfonse D'Amato (R-NY). After having evaluated and endorsed her for that federal district court judgeship, the HNBA worked with the White House and then Senate Judiciary Committee Chairman, Joseph Biden (D-DE), to secure her confirmation. When President Bush appointed Judge Sotomayor, she was the first Hispanic federal judge in New York and the first Hispanic female federal judge in the country.

In 1997, President William J. Clinton nominated Judge Sotomayor to serve on the United States Court of Appeals for the Second Circuit. The HNBA evaluated Judge Sotomayor's candidacy and jurisprudence during her six years of service as a federal district court judge at that time and endorsed her. Subsequently, the HNBA again worked with the White House and then Senate Judiciary Committee Chairman Orrin Hatch (R-UT) to secure the confirmation of Judge Sotomayor and her appointment by President Clinton in 1998.

D. Judicial Restraint and Temperament

Based on our analysis, Judge Sotomayor's jurisprudence demonstrates close attention to the facts of each case and a healthy respect for legal precedent. Her work is characterized by a thoughtful and measured approach to complicated legal questions, a diligent application of the law, reasoned judgment, and an unwavering commitment to upholding the Constitution and Supreme Court precedent. Rather than paint with a broad brush, her decisions reflect the importance of fidelity to the law, exercise of judicial restraint, and a narrowly restricted opinion that speaks only to the question presented.

It is with this measured approach that Judge Sotomayor has consistently rendered sound decisions during her impressive tenure. Her opinions cannot be readily associated with a particular political persuasion or judicial philosophy. Instead, her judicial record displays impartiality, a keen awareness of the limits of judicial review, a clear sense of the impact that her decisions have on the litigants before her and on the lower courts that must apply her precedential rulings, and a dedication to reaching the fair, just, prudent and law driven result. In short, she is the antithesis of an activist judge and she does not substitute her own perspective for what the law dictates.

Outside the courtroom, Judge Sotomayor has been a contributing member of the legal and scholarly communities, speaking to students and professionals, writing articles, and serving as a role model to young people. Critics of Judge Sotomayor have focused on a few out-of-court statements to suggest that her decisions are based on factors other than the interpretation of the legal questions posed to her. We respectfully suggest that the proper measure of Judge Sotomayor's fitness is the portfolio of her seventeen years as a jurist, which should be the focus of this Committee's analysis. Based on its review of Judge Sotomayor's jurisprudence, we believe that this Committee will conclude, as the HNBA has concluded, that her extensive judicial record reflects judicial restraint. Diversity of background, and consequently of experience, does not detract from a jurist's

ability to adhere to the rule of law and should not be used as a litmus test to determine whether a jurist is able to remain objective and impartial. Judge Sotomayor embodies the truism that diversity coexists with fairness and sound judgment.

E. Service to the American People

For most of her career, Judge Sotomayor has foregone the private sector positions available to individuals with her extraordinary credentials in order to serve the American people. She has spent 22 years of her 30 year career in the public sector as a judge or prosecutor.

Her engagement with the community also spans her career and is evident from her responses to this Committee's questionnaire, where she details her volunteer service to a broad range of organizations that serve the public interest. For example, before becoming a judge she volunteered for the State of New York Mortgage Agency, the Puerto Rican Legal Defense and Education Fund (now known as Latino Justice PRLDEF), the New York State Advisory Panel on Inter-Group Relations, and the New York City Campaign Finance Board. Since becoming a judge, she has routinely made herself available as a speaker to law schools, bar associations and law student groups, served on the selection committees for various scholarships, and joined the Board of Trustees of her *alma mater*, Princeton University.

Of great significance to the HNBA is the fact that Judge Sotomayor has consistently demonstrated meaningful involvement in the Hispanic community. Judge Sotomayor has been a member of the HNBA for many years, has judged our moot court competition, spoken at some of our conventions, and attended or addressed gatherings of our local affiliates. Because of both her reputation as a remarkable jurist and her engagement, Judge Sotomayor has an outstanding reputation within the Hispanic legal profession.

IV. IMPORTANCE OF A HISPANIC PRESENCE ON THE SUPREME COURT

The HNBA's advocacy for a more diverse judiciary starts from the premise that diversity makes for a stronger Nation. As Justice Sandra Day O'Connor once noted, "society as a whole benefits immeasurably from a climate in which all persons, regardless of race or gender, may have the opportunity to earn respect, responsibility, advancement and remuneration based on ability." The American people benefit from having a judiciary that reflects our country's diversity and that depicts the varied perspectives and backgrounds of its population.

Moreover, adherence to and respect for the rule of law depends on public understanding of our system of government and on the People's trust in our judges to rule independently and fairly. There are over 45 million Hispanics in the United States, and we are the largest, fastest growing, and youngest segment of our Nation's population. Because the HNBA appreciates the importance of cultivating greater understanding and trust in our legal system among Hispanics, it has invested its own resources on

educational programs for our community, including La Promesa en el Derecho * The Promise in the Law. This booklet is written in 9th grade English and Spanish to explain ten basic aspects of the American system of government.

If we are to nurture a sense of pride and connection to the judicial system, there is no substitute for a legal profession and a judiciary that reflect the rich mosaic of the American people. However, Hispanics continue to be severely under-represented among lawyers and judges. The appointment of the first Hispanic to the Supreme Court of the United States is an important symbolic advancement for our community, much like the appointment of Justice Thurgood Marshall was for African Americans, and the appointment of Sandra Day O'Connor was for women. The confirmation of Judge Sotomayor would foster a greater connection between Latinos and the judicial system and would help imbue Latinos with a sense of ownership in our courts.

V. CONCLUSION

The HNBA endorses Judge Sotomayor not only because she exceeds the required credentials to be a Supreme Court Justice, but also because she is a beacon of hope for all Americans. Her personal story resonates with all of us as proof positive that in our country even those from the most modest beginnings can achieve the highest pinnacles of our Nation's leadership.

We are grateful to President Obama for selecting a nominee in Judge Sotomayor who has demonstrated intellectual rigor and fidelity to the law. The HNBA also thanks the Senate Judiciary Committee for giving it the opportunity to speak on behalf of the Hispanic legal community in support of Judge Sonia Sotomayor on this historic occasion. Finally, our thanks to all Americans for their interest in this important process and to the Committee for according Judge Sotomayor the respect she has earned. The HNBA urges the Senate to confirm Judge Sotomayor so that all Americans can celebrate her confirmation as another milestone in our journey to becoming "one Nation, indivisible."

RAMONA E. ROMERO, NATIONAL PRESIDENT HISPANIC NATIONAL BAR ASSOCIATION

According to the Bureau of Labor Statistics, as of 2007, Hispanics comprised only 4.3% of all lawyers and 6% of all judges and other judicial workers.



JOINT STATEMENT BY THE PAST PRESIDENTS OF THE HISPANIC NATIONAL BAR ASSOCIATION

EXHIBIT A

TO

WRITTEN STATEMENT OF THE HISPANIC NATIONAL BAR ASSOCIATION
IN SUPPORT OF THE CONFIRMATION OF THE
HONORABLE SONIA SOTOMAYOR
AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES



RAMONA E. ROMERO NATIONAL PRESIDENT

July 10, 2009

VIA FACSIMILE AND FIRST CLASS MAIL

Senator Patrick Leahy Chairman U.S. Senate Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510-6275

Senator Jeff Sessions Ranking Member U.S. Senate Committee on the Judiciary 224 Dirksen Senate Office Building Washington, DC 20510-6275

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Hispanic National Bar Association ("HNBA"), I am writing to inform you of a development relating to the nomination of Judge Sonia Sotomayor to serve as an Associate Justice of the Supreme Court of the United States. All 27 living past presidents of the HNBA, including Mario Obledo, its founding President, have signed a statement ("Statement") in support of Judge Sotomayor's fair and expeditious confirmation. We are attaching a copy of their Statement for the Committee's information and for the congressional record.

These HNBA leaders, all of whom have worked to further an independent, impartial and diverse judiciary though our non-partisan, not-for-profit Association, are diverse themselves. They include Democrats, Republicans and Independents, and come from around the country and from all Hispanic backgrounds.

We appreciate the Committee's consideration of this statement. Should you have any questions, please contact us at (202) 223-4777.

Very truly yours,

Ramona E. Romero

Ramona Komero

HNBA National President

We the undersigned past presidents of the Hispanic National Bar Association wholeheartedly support the nomination of Judge Sonia Sotomayor to serve as an Associate Justice on the United States Supreme Court. Judge Sotomayor has exceptional academic and professional credentials. She is a summa cum laude graduate of Princeton University and graduated from Yale Law School, where she served as an editor of the Yale Law Journal. Before her appointment to the federal bench, Judge Sotomayor was a prosecutor for five years in the Manhattan District Attorney's Office and then a commercial litigator in a private law firm. Judge Sotomayor has been a federal judge for 17 years, serving with distinction on both the U.S. District Court for the Southern District of New York and the Second Circuit Court of Appeals.

We have all long been troubled by the fact that no person of Hispanic heritage has ever served on our nation's highest court. During our terms as HNBA President, each and every one of us engaged in bipartisan efforts to diversify the federal bench and to build a pipeline of qualified Latino lawyers, jurists and legal scholars who would be prepared to serve on the U.S. Supreme Court with distinction. We have always been convinced that greater diversity on the Supreme Court would broaden and strengthen the perspective of its jurisprudence and enhance the administration of justice for all Americans. Words cannot adequately express the delight in our hearts that our time has finally arrived. We urge the U.S. Senate to confirm an exceptional jurist with extraordinary federal judicial and legal experience, Judge Sonia Sotomayor.

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