

**Response of Analisa Torres  
Nominee to be United States District Judge for the Southern District of New York  
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

**Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: My judicial philosophy is to adhere to the law and apply it impartially. I have not undertaken a meaningful assessment of the Supreme Court Justices' philosophies, so I am unable to say which is most analogous to mine.

**Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?**

Response: If confirmed, I would take my instruction on issues of constitutional interpretation from Supreme Court and Second Circuit precedents applicable to each case and not from any particular theory of constitutional interpretation. I note, however, that the Supreme Court has applied originalism in cases including *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

**If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

Response: If confirmed, there would be no circumstance in which I would overrule a precedent.

Congressional Power

**Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).**

Response: The holding in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), is controlling authority. If confirmed, I would apply it as binding precedent, whether I agree with it or not.

**Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?**

Response: The Supreme Court has "identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even

though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce[.]” *United States v. Lopez*, 514 U.S. 549, 558-559 (1995) (citations omitted). If confirmed, I would apply the analysis set forth in *Lopez* and other applicable precedents of the Supreme Court and the Second Circuit, in order to determine whether an activity is covered by the Commerce Clause.

### Presidential Power

**What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?**

Response: Justice Jackson defined the judicially enforceable limits on presidential acts in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), and the full Supreme Court adopted the analysis set forth in his concurrence in that case. If confirmed, I would apply the *Youngstown* analysis to any cases in which I am called upon to assess the legality of presidential executive orders or actions.

### Individual Rights

**When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?**

Response: The Supreme Court has stated that the “Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted).

**When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The Supreme Court applies the strict scrutiny standard in evaluating suspect classifications such as race and national origin. Strict scrutiny is also applied to state action that impinges on fundamental rights under the Constitution.

**Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).**

Response: If confirmed, I would apply controlling precedent in the area of affirmative action in higher education, without regard to my expectations or opinions.