

**Senator Grassley  
Questions for the Record**

**Diane J. Humetewa  
Nominee: U.S. District Judge for the District of Arizona**

**1. If confirmed, how will you use the Sentencing Guidelines in your decision making?**

Response: The U.S. Sentencing Guidelines provide structure and uniformity in the nation's federal sentencing scheme. If confirmed, I intend to apply the Sentencing Guidelines to determine the applicable sentencing range to the individual to be sentenced along with the sentencing factors in 18 U.S.C. 3553(a) to determine an appropriate sentence within the guideline range.

**a. Do you intend to utilize the Report of the Native American Advisory Group for the U.S. Sentencing Commission, to which you contributed?**

Response: No. The 2003 Report of the Native American Advisory Group does not have the force of law and therefore it would be inappropriate to use it in sentencing. Rather, it is a report of findings and recommendations to the U.S. Sentencing Commission based on the Group's review of limited sentencing data and the operation of the sentencing guidelines at the time.

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

Response: A judge must adhere to the principle of applying the law, including all relevant precedent, to arrive at a decision. My myriad of legal experiences has enabled me to develop and hone this attribute. As a federal and tribal prosecutor I objectively applied the law to investigations to determine whether or not the facts met the elements of a criminal statute. From my service as a judge in the Hopi Court, I have experience in objectively applying the law to the civil legal issues at bar.

**3. 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: The appropriate temperament of a judge includes demonstrating patience and respect for the litigants and their lawyers, regardless of their skill level, while controlling the pace of litigation. I believe I possess these attributes.

**4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: If confirmed, I will faithfully apply the Supreme Court and Ninth Circuit precedent without regard to my personal views.

- 5. 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: If faced with a case of first impression, I will apply the plain language of the statute, rule or regulation. If the language is vague, I would look to the full text of the statute, rule or regulation. If that does not resolve the issue, I would examine Supreme Court and Ninth Circuit precedent interpreting analogous language. If necessary, I would also examine precedent from other Circuits that might be persuasive.

- 6. 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 will never substitute my personal opinion for that of Supreme Court and Ninth Circuit precedent.

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

Response: Congressionally enacted statutes are presumed constitutional and federal district courts should only declare a statute unconstitutional if, in applying precedent, the Congress has exceeded its constitutional authority.

- 8. 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: It is never appropriate for a federal judge to apply foreign law, world or community views when determining the meaning of the U.S. Constitution.

- 9. 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: If confirmed, I will adhere to the principle of applying the law and precedent to all matters that come before me. Throughout the course of my legal career, I have operated within the parameters of the law, whether I was a prosecutor, a civil litigator or appellate court judge, and I have never used the positions I’ve held to espouse political ideology or motivation. My reputation for adhering to the application of law should ensure the Committee that I will continue to adhere to that principle.

- 10. 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: My reputation in the Arizona legal community, including the defense bar, is one of fairness, equity and objectivity, even in adversarial proceedings. If confirmed, I will continue to maintain that reputation as a district court judge.

- 11. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I will learn and apply the Arizona district court case management tools that are specifically designed for its high volume of cases. I will apply the Federal Civil and Criminal Rules of Procedure. I will also rely upon the Federal Civil and Criminal Rules of Procedure to conduct meet and confer conferences early in the case and rule on dispositive motions as efficiently as possible to allow the parties to evaluate the case for settlement or trial. I will make myself available to the parties to settle discovery disputes and work with them to narrow the issues.

- 12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: District court judges play an integral role in controlling the pace and conduct of litigation, especially in districts like Arizona where the civil and criminal caseload is amongst the highest in the nation. In addition to using the methods described in the previous answer, I will also use the magistrate judges where necessary to move cases along.

- 13. 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.**

As an appellate court judge, I examined the briefs, the record of the lower court proceedings, and if necessary, narrowed the issues on appeal. I then researched and applied the applicable law and precedent, or in the absence of controlling law or precedent, I looked to state and federal law and analogous precedent to arrive at a decision. I endeavored to be clear in my oral and written opinions.

- 14. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees.”**

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes,**

**please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

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

Response: I reviewed each question, drafted my answers to each question and provided them to the U.S. Department of Justice for review. I authorized the Department of Justice to provide my responses to the Committee on February 10, 2014.

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

Response: The answers to each of these questions reflect my true and personal views.

Senator Ted Cruz  
Questions for the Record

Diane J. Humetewa  
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**Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice’s judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.**

Response: If confirmed, the judicial philosophy that I hope to embody is one of applying the law and precedent to each matter and by demonstrating respect and patience with the parties and all who appear in my court room. I have not studied the philosophies of individual Justices from the Warren, Burger or Rehnquist Courts so I am unable to comment on whether they have an analogous philosophy.

**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: Recently the Supreme Court analyzed the original public meaning of the Constitution in several cases, including in *District of Columbia v. Heller*, 554 U.S. 570 (2008), to determine whether or not a statute was unconstitutional. I will adhere to that precedent.

**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: As a federal district court judge, it would be inappropriate for me to overrule Supreme Court or Ninth Circuit precedent and I would not do so under any circumstances.

**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: I will apply the Supreme Court precedent, including the *Garcia*, case in analyzing questions of federal and state powers. I do not believe it would be appropriate for me to agree or disagree with any binding Supreme Court precedent.

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

Response: If confirmed, I will apply the Supreme Court precedent, including *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000) and *Gonzales v. Raich* 545 U.S. 1 (2005), which analyze the Congress’ Commerce Clause authority.

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

Response: The Supreme Court’s decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), provides precedent for determining the President’s authority to issue executive orders or take executive action. The authority must derive from the Constitution or be authorized, expressly or impliedly, by Congress.

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

Response: A right is fundamental for purposes of the substantive due process doctrine if that right is “deeply rooted in the Nation’s history and traditions,” and “implicit in the concept of ordered liberty” such that “neither liberty nor justice would exist if they were sacrificed.” See *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997), citing *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937).

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

Response: Heightened scrutiny under the Equal Protection Clause should be applied when a classification burdens a fundamental right or when it involves categories such as race, gender, national origin or alienage. See *City of Cleburne v. Cleburne Living Center Inc.*, 473 U.S. 432 (1985).

**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: I do not have any personal expectations regarding this issue. If confirmed, I will apply *Grutter*, *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013), and other applicable Supreme Court precedent to issues involving racial preference in public higher education.