

Responses of Gonzalo P. Curiel
Nominee to be United States District Judge for the Southern District of California
to the Written Questions of Senator Chuck Grassley

1. **In your career as an Assistant U.S. Attorney, you focused your energy extensively on drug traffickers along the Tijuana corridor. According to a 2002 report from ABC's Nightline, you were even targeted by a cartel assassination plot in the 1990s following your attempts to secure extradition of two cartel members from Mexico. We thank you for your work and personal sacrifice.**

It is worth noting that the reputed head of the cartel that targeted you, Benjamin Arellano Felix, was extradited to the United States and has recently been sentenced to a 25 year term in prison. One issue regarding Mexico's extradition policy is its apparent ban on extraditing any criminals who may face the death penalty in the U.S.

- a. Is this your current understanding of U.S.-Mexican extradition policy?**

Response: Under Article 8 of the Extradition Treaty between the United States and Mexico, each country has the right to refuse extradition where the offense for which extradition is requested is punishable by death under the laws of the requesting party and the laws of the requested party do not permit such punishment for that offense. Each country may exercise its discretion to permit such extradition if the requesting country provides sufficient assurances that the death penalty will not be imposed. It is my understanding that, relying on the treaty, Mexico requires such assurances prior to extraditing an individual facing the death penalty.

- b. When you served as a prosecutor, is it correct that Mexico also barred the extradition of any citizen facing life imprisonment?**

Response: Article 9 of the Extradition Treaty between the United States and Mexico provides that neither country is bound to extradite its own nationals. When I was a prosecutor, the Republic of Mexico agreed to extradite its nationals as long as there were sufficient assurances that a term of life imprisonment would not be imposed.

- c. How did you deal with this legal hurdle?**

Response: In general, we provided the assurances required to secure extradition but still sought a sufficient term of incarceration that would impose an appropriate punishment for the criminal conduct, ensure the safety of the community, provide necessary deterrence, and prevent the defendant from returning to a life of crime.

- d. As a federal judge in Southern California, you may have issues such as these come up in your courtroom. How would you approach sentencing if the death penalty was not a punishment option as a result of treaty policy?**

Response: A federal judge is duty bound to follow the laws of the United States as set forth in the Constitution, statutes, treaties and case law. My approach to sentencing would be to determine and follow the appropriate sentencing laws of the United States.

- e. To what extent should U.S. judges consider foreign law in making rulings or decisions?**

Response: First, foreign law does not constitute binding precedent for a U.S. judge. Second, in general, foreign law should not be considered in making decisions or rulings. However, in certain limited circumstances, such as international commerce cases involving contracts governed by laws of other countries, it may become necessary to consider foreign law to properly decide a case.

- 2. For a majority of your career you practiced criminal law in the U.S. Attorney's Office. Your civil litigation experience is primarily limited to your time presiding over family court matters as a California State Court judge. Please describe your civil litigation experience and how you will be prepared to handle federal civil litigation if you are confirmed as a judge.**

Response: If I am confirmed as a federal judge, I believe that my career has prepared me to handle federal civil litigation. Prior to becoming a prosecutor, I practiced civil law for 10 years. In addition, since becoming a state judge, I have presided over civil family law cases for three years and civil unlimited jurisdiction cases for one year and three months. During my civil tenure, I have handled 16 civil trials including 11 jury trials with an average length of eight days. These civil trials include cases involving intellectual property law, employment law, and wage and hour law. Also, since January 2012, I have managed a civil docket consisting of more than 600 cases and am responsible for handling all aspects of the cases, including discovery matters, summary adjudication motions, trials, and post-trial motions.

- 3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. Justice Roberts addressed this issue at his hearing saying that "If the Constitution says that the little guy should win, the little guy's going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy's going to win."**

- a. To what extent does empathy have a place in the judicial process?**

Response: The judicial process must be administered fairly without regard to a person's background, economic situation or personal situation. Cases must be decided based upon admissible evidence and the applicable law. Empathy does not play a role in the judicial process.

b. In your view, what is determinative as to who wins or loses?

Response: The admissible evidence and applicable law in a case determines who wins or loses.

c. In your opinion, what is the role of the judge in protecting the interests of the "little guy?"

Response: A judge protects the "little guy" (and the "big guy") by applying the law fairly and evenhandedly to all of the parties whether they are "little" or "big."

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

Response: In my view, respect for the judicial process is the most important attribute of a judge. Respect for the judicial process entails: (1) providing the parties a fair opportunity to be heard; (2) determining and faithfully applying legal precedent; and (3) explaining a court's reasons for its decisions. I strive to attain this attribute in my work every day.

5. 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 consists of a number of elements including patience, humility, respect, courage and impartiality. These elements permit the parties to have their positions considered fairly and openly. I have and will continue to work towards meeting and maintaining this standard.

6. 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. 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: Yes, I am committed to following precedent faithfully even if I disagree with such precedent.

7. 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 a case of first impression, I would look to the text of the applicable law and aim to give effect to the words of the statute, rule or regulation. In so doing, I would consider the arguments of the parties and follow the canons of statutory construction. For guidance and instruction, I would look for cases from the U.S. Supreme Court and Ninth Circuit addressing analogous issues. In the event that there were no cases, I would look to the decisions of the other courts of appeals on the same or analogous issue.

8. 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: As a district court judge, I would apply all precedent from the U.S. Supreme Court or the Court of Appeals faithfully without regard to personal feelings or opinions that a case was decided incorrectly.

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

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional in very limited situations. A statute is presumed to be constitutional. In the event that a canon of constitutional avoidance did not apply, I would strike down a law if Congress exceeded its authority in enacting the law or the law is in conflict with a constitutional right.

10. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will put in place a timeline for monitoring and managing cases expeditiously to ensure that cases are moving forward towards trial or settlement. As a part of this system, I will use case management conferences to set a schedule for discovery, summary adjudication motions, mediation and trial. As to discovery matters, I will aim to have discovery matters resolved quickly so as to avoid delays. Also, I will confer with the chief judge and my colleagues to identify the causes of the pressures and determine what solutions the district and individual judges have implemented. I will adopt the district wide solutions and seek to identify additional means to reduce the pressures.

11. 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: Judges play a significant role in controlling the pace and conduct of litigation. If confirmed, I would take the specific steps outlined in my response to question 10.

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

Response: After reviewing the questions, I prepared a draft answer to each question. Afterwards, I reviewed my answers with the Office of Legal Policy of the Department of Justice and thereafter finalized my answers.

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

Response: Yes.

Responses of Gonzalo P. Curiel
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to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: To the extent that I have a judicial philosophy, it is premised on respect. I have an abiding respect for the parties, their cases, and the rule of law. The role of a judge in our constitutional system is to apply the law fairly and faithfully in an open and transparent process.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: The rule of law requires that all litigants be treated fairly and impartially regardless of their beliefs, wealth or status. I am committed to upholding the rule of law.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: Judges are bound by the doctrine of stare decisis. The doctrine of stare decisis applies to all courts but with particular vigor in the case of a trial court. A trial court is primarily the trier of fact and is expected to follow the law as articulated by the United States Supreme Court and the appellate courts.