

**SONIA SOTOMAYOR:  
A NONIDEOLOGICAL AND RESTRAINED JUDGE**

1. At the time of Judge Sotomayor's nomination to the Second Circuit, Gerald Walpin, who the *New York Times* called "a former federal prosecutor who is widely known in New York legal circles as a staunch conservative," described Judge Sotomayor as "exactly what conservatives want: a nonactivist judge who does not apply her own views but is bound by the law." *GOP, Its Eyes on High Court, Blocks a Judge, New York Times (Jun. 13, 1998)*.
2. Judge Sotomayor wrote expressly about the importance of judicial restraint in the questionnaire she submitted to the Senate Judiciary Committee in connection with her Second Circuit nomination:

Our Constitution vests the right to make and administer laws in the legislative and executive branches of our government. Judges impermissibly encroach upon that right by rendering decisions that loosen jurisdictional requirements outside of the scope of established precedents and by fashioning remedies aimed at including parties not before the court to resolve broad societal problems.

Judges must provide fair and meaningful remedies for violations of constitutional and statutory rights to the parties before a court. Doing so can, at times, affect broad classes of individuals, may place affirmative burdens on governments and society, and may require some administrative oversight functions by a court.

A judge's decision should not, however, start from or look to these effects as an end result. Instead, because judicial power is limited by Article III of the Constitution, judges should seek only to resolve the specific grievance, ripe for resolution, of the parties before the court and within the law as written and interpreted in precedents. Intrusion by a judge upon the functions of the other branches of government should only be done as a last resort and limitedly.

My service as a judge has only reinforced the importance of these principles. . . .

3. Judge Sotomayor also spoke to the importance of fidelity to the law and of judicial restraint in the confirmation hearing itself. When asked by then-Senator Ashcroft whether she would "read additional rights into the Constitution, like a right for homosexual conduct on the part of a prisoner," she said: "I can't do it, sir. I can't do it because it is so contrary to what I am as a lawyer, and as a judge. The Constitution is what it is. We cannot read rights into them. They have been created for us." And when asked by Senator Sessions whether "we really weaken and undermine the Constitution when we try to bend it to make it fit our contemporary feelings of the moment", she replied: "Sir, I don't believe we should bend the Constitution under any circumstance. It says what it says. We should do honor to it."

4. Since joining the Second Circuit, Judge Sotomayor has developed a record as a moderate who agrees with her more conservative colleagues far more frequently than she disagrees with them.

*-Since joining the Second Circuit, she has participated in 434 published panel decisions where the panel included at least one judge appointed by a Republican president. In those cases, she agreed with the result favored by the Republican appointees in 413 cases --- 95% of the time.*

5. Many of Judge Sotomayor's opinions reflect a keen understanding of the appropriate limits of the judicial role.

- *-Takes care to make sure the case is properly before the courts. In Center for Reproductive Law & Policy v. Bush (2002), for example, Judge Sotomayor affirmed the dismissal of a reproductive rights organization's challenge to the "Mexico City Policy" on the ground that the organization lacked standing to bring the case.*
- *-Respects criminal convictions and sentences, and does not rush to reverse them even when mistakes were made. In United States v. Falso (2008), for example, Judge Sotomayor concluded that although the search warrant used to obtain the evidence against the defendant was not supported by probable cause, the officers who executed the search acted in good faith reliance on it and thus the conviction should stand. Similarly in United States v. Rittweger (2008), Judge Sotomayor concluded that although the prosecution had violated the defendant's rights under Brady, the error did not affect the outcome of the trial and thus the conviction should stand.*
- *-Respects controlling precedent. In Mendez v. Mukasey (2008), for example, Judge Sotomayor wrote a panel opinion applying circuit precedent to hold that the court lacked jurisdiction to review an IJ decision on a particular issue respecting cancellation of removal. Yet her opinion also expressed the panel's view that the petitioner's arguments on the merits were "persuasive," and that "[w]ere we operating on a new slate, we would be inclined to hold that the question of whether an alien has established 'exceptional and extremely unusual hardship' is a determination for which we have jurisdiction to review."*