



November 20, 2019

**OPPOSE THE CONFIRMATION OF PATRICK BUMATAY TO THE  
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in opposition to the confirmation of Patrick Bumatay to the U.S. Court of Appeals for the Ninth Circuit.

Mr. Bumatay, 41, is a conservative ideologue who served as a political operative in the Trump Justice Department. He has carried out some of the most extreme anti-civil rights policies of the Trump administration, and he has expressed personal opposition to university efforts to support student diversity. Mr. Bumatay is the fourth conservative ideologue nominated this year to a California seat on the Ninth Circuit over the objections of Ranking Member Feinstein and Senator Harris, the home-state senators. This lack of respect for the role of home-state senators in the advice and consent process is unprecedented and traditionally would have prevented Mr. Bumatay's nomination from moving forward. This nomination is part and parcel of a disgraceful effort by President Trump to pack the Ninth Circuit – which has ruled against him at least 29 times<sup>1</sup> – with judges who he believes will rubberstamp his radical agenda. The Senate must reject Mr. Bumatay for a lifetime position on the Ninth Circuit.

**Advanced Anti-Civil Rights Agenda in Trump Administration:** Mr. Bumatay worked for two years as a political operative in the Trump Justice Department, advancing numerous right-wing policies and initiatives. He was a core member of the nomination teams that worked to jam President Trump's two arch-conservative Supreme Court nominees with anti-civil rights records, Brett Kavanaugh and Neil Gorsuch, through the confirmation process.<sup>2</sup> These divisive and disturbing nominees were strenuously opposed by The Leadership Conference, hundreds of public interest organizations, and millions of Americans.

In addition, Mr. Bumatay played a central role in one of the most troubling civil rights rollbacks of the Trump Justice Department – a policy issued in May 2017 that abandoned the Department's "Smart on Crime" initiative and reinstated a discredited practice of draconian charging and sentencing.<sup>3</sup> The Smart on Crime initiative was developed in 2013 to alleviate disparate impacts in the criminal legal system and ensure fairness in sentencing for low-level

<sup>1</sup> [https://www.washingtonpost.com/world/national-security/the-real-reason-president-trump-is-constantly-losing-in-court/2019/03/19/f5ffb056-33a8-11e9-af5b-b51b7ff322e9\\_story.html?utm\\_term=.a12886215573](https://www.washingtonpost.com/world/national-security/the-real-reason-president-trump-is-constantly-losing-in-court/2019/03/19/f5ffb056-33a8-11e9-af5b-b51b7ff322e9_story.html?utm_term=.a12886215573).

<sup>2</sup> <https://www.judiciary.senate.gov/imo/media/doc/Bumatay%20Responses%20to%20QFRs.pdf>.

<sup>3</sup> *Id.*

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drug offenses. Mr. Bumatay's efforts to reverse this vital policy will perpetuate mass incarceration of poor, Black, and Brown people.

Mr. Bumatay also worked on a widely condemned "zero tolerance" policy that resulted in cruel and inhumane treatment of undocumented immigrants.<sup>4</sup> This April 2018 policy for U.S. Attorney's offices along the southwest border led to the inhumane separation of thousands of children from their families. Mr. Bumatay may have worked on other civil rights rollbacks as well, but he refused to answer basic questions from Ranking Member Feinstein about matters he worked on at the Justice Department.<sup>5</sup>

**Hostility to Diversity Programs and Implicit Bias Training:** Mr. Bumatay has expressed contempt for university diversity programs. As a college student, he wrote an op-ed in which he stated: "The loss of a Yale identity began with the institution's obsession with diversity.... To Yale, I became Patrick Bumatay, Asian/Asian American/Pacific Islander/South Asian. Yes, I became a checked-off box. To Yale, I was not an individual but another representative of my ethnic group. These actions destroy the Yale identity and hurt everyone involved.... How can minorities at Yale compete on an equal level with other Yalensians when they are from the beginning treated as inferior to everyone else?"<sup>6</sup> He also wrote: "In order to further push minority students to the margins of campus, Yale actually gives minority groups separate Yale-owned houses to preserve their ethnic identities.... Now instead of going to Mory's for a cup or to Naples for a pizza, minority Yalensians go to the Asian-American House for green tea or to the Af-Am House to discuss why it is okay to have a 'black table' in Commons."<sup>7</sup> These types of comments reflect a strong hostility to common-sense efforts by universities to value and support students of color, and they demonstrate an ignorance of history and discrimination in our society.

Mr. Bumatay is skeptical of efforts to combat discrimination in another context: judicial training. The federal judiciary itself promotes implicit bias training for judges,<sup>8</sup> yet Mr. Bumatay refused to acknowledge the value of such training. Senator Hirono asked him: "Prior nominees before the Committee have spoken about the importance of training to help judges identify their implicit biases. Do you agree that training on implicit bias is important for judges to have?" Mr. Bumatay responded with a non-response: "It is the duty of the judge to ensure that bias, implicit or otherwise, has no place in our justice system."<sup>9</sup> By contrast, another recent nominee, Barbara Lagoa, gave the following straightforward answer to the same question: "Yes."<sup>10</sup> It is troubling that Mr. Bumatay could not bring himself to agree with other nominees that implicit bias training is important for judges.

**Ideological Affiliations and Career:** Mr. Bumatay has been a longtime member of the Federalist Society, having joined in 2003 during his first year of law school. This out-of-the-mainstream legal organization represents a sliver of America's legal profession – just four percent – yet nearly 85 percent of President Trump's appellate court nominees and nearly 50 percent of his district court nominees have

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> <https://afj.org/wp-content/uploads/2019/10/Elihus-Diary.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> <https://www.fjc.gov/content/337735/reducing-bias>.

<sup>9</sup> <https://www.judiciary.senate.gov/imo/media/doc/Bumatay%20Responses%20to%20QFRs.pdf>.

<sup>10</sup> <https://www.judiciary.senate.gov/imo/media/doc/Lagoa%20Responses%20to%20QFRs.pdf>.

been Federalist Society members. Mr. Bumatay has advanced his conservative agenda throughout his career. He worked on nearly a dozen Republican campaigns and served as a political appointee in the George W. Bush administration. He also served as a law clerk for an extreme, right-wing federal judge, Timothy Tymkovich, whom The Leadership Conference opposed for confirmation in 2003.<sup>11</sup>

**Lack of Home-State Senator Support:** Nominating someone over the objection of home-state senators departs from past Senate tradition and subverts the Constitution’s advice and consent process. As former Senator Hatch astutely observed in 2014: “Weakening or eliminating the blue slip process would sweep aside the last remaining check on the president’s judicial appointment power. Anyone serious about the Senate’s ‘advice and consent’ role knows how disastrous such a move would be.”<sup>12</sup> This institutional check has never been more important than today, with a president who undermines the legitimacy of judges and their rulings, and who prioritizes personal loyalty over fealty to the law.

Opposition from Ranking Member Feinstein and Senator Harris traditionally would have been a bar to Mr. Bumatay even receiving a Senate hearing for a California seat on the Ninth Circuit. But in their zeal to pack the federal courts with extreme, right-wing ideologues, Senate Republicans have been confirming Trump judicial nominees at a record pace and over the strong objection of the very senators elected to represent the state where the judge would preside. It is particularly alarming when both of those senators sit on the Senate Judiciary Committee, and one of them serves as the ranking member of that committee.

When Republicans controlled the Senate during the Obama administration, they did not provide a hearing or vote to a single nominee who lacked support from both home-state senators. Under President Trump, however, Senate Republicans have employed a double standard and given a hearing to 17 circuit court nominees who were so extreme they could not earn the support of one or both home-state senators: David Stras, Michael Brennan, Ryan Bounds, David Porter, Eric Murphy, Chad Readler, Eric Miller, Paul Matey, Michael Park, Joseph Bianco, Kenneth Lee, Daniel Collins, Daniel Bress, Peter Phipps, Steven Menashi, Lawrence VanDyke, and Mr. Bumatay. Senate Republicans have destroyed the blue slip tradition for circuit court nominees, and future presidents and Senates are unlikely to revive it.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Patrick Bumatay to the U.S. Court of Appeals for the Ninth Circuit. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel, at (202) 466-3311.

Sincerely,



Vanita Gupta  
President & CEO

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<sup>11</sup> <https://civilrights.org/2003/01/27/civil-rights-environmental-and-labor-organizations-join-in-opposition-to-bushs-extremist-judicial-nominees/>.

<sup>12</sup> <https://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.