

THE WHITE HOUSE

WASHINGTON

September 30, 2010

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Chairman
Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senator Reid, Senator McConnell, Senator Leahy, and Senator Sessions:

I write to express my concern with the pace of judicial confirmations in the United States Senate. Yesterday, the Senate recessed without confirming a single one of the 23 Federal judicial nominations pending on the Executive Calendar. The Federal judiciary and the American people it serves suffer the most from this unprecedented obstruction. One in eight seats on the Federal bench sits empty, and the Administrative Office of the U.S. Courts has declared that many of those vacancies constitute judicial emergencies. Despite the urgent and pressing need to fill these important posts, a minority of Senators has systematically and irresponsibly used procedural maneuvers to block or delay confirmation votes on judicial nominees – including nominees that have strong bipartisan support and the most distinguished records. The minority has even been blocking non-controversial nominees – a dramatic shift from past practice that could cause a crisis in the judiciary.

The Judiciary Committee has promptly considered my judicial nominees. Nonetheless, judicial confirmation rates in this Congress have reached an all-time low. At this point in the prior Administration (107th Congress), the Senate had confirmed 61% of the President's judicial nominations. By contrast, the Senate has confirmed less than half of the judicial nominees it has received in my Administration. Nominees in the 107th Congress waited less than a month on the floor of the Senate before a vote on their confirmation. The men and women whom I have nominated who have been confirmed to the Courts of Appeals waited five times longer and those confirmed to the District Courts waited three times longer for final votes.

Right now, 23 judicial nominees await simple up-or-down votes. All of these nominees have the strongest backing from their home-state Senators – a fact that usually counsels in favor of swift confirmation, rather than delay. Sixteen of those men and women received unanimous support in the Judiciary Committee. Nearly half of the nominees on the floor were selected for seats that have gone without judges for anywhere between 200 and 1,600 days. But despite these

compelling circumstances, and the distinguished careers led by these candidates, these nominations have been blocked.

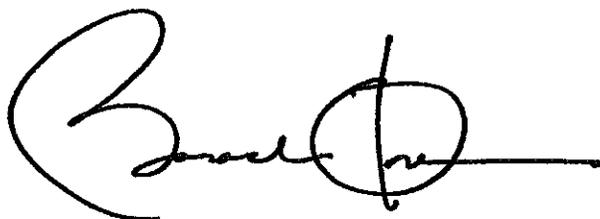
Judge Albert Diaz, the well-respected state court judge I nominated to the U.S. Court of Appeals for the Fourth Circuit, has waited 245 days for an up-or-down vote – more than 8 months. Before becoming a judge, Diaz served for over 10 years in the United States Marine Corps as an attorney and military judge. If confirmed, he would be the first Hispanic to sit on the Fourth Circuit. The seat to which he was nominated has been declared a judicial emergency. Judge Diaz has the strong support of both of North Carolina's Senators. Senator Burr has publicly advocated for Judge Diaz to get a final vote by the Senate. And just before the August recess, Senator Hagan went to the floor of the Senate to ask for an up-or-down vote for Judge Diaz. Her request was denied.

We are seeing in this case what we have seen in all too many others: resistance to highly qualified candidates who, if put to a vote, would be unanimously confirmed, or confirmed with virtually no opposition. For example, Judge Beverly Martin waited 132 days for a floor vote – despite being strongly backed by both of Georgia's Republican Senators. When the Senate finally held a vote, she was confirmed to the Eleventh Circuit unanimously. Jane Stranch was recently confirmed by an overwhelming majority of the Senate, after waiting almost 300 days for a final vote. Even District Court nominees have waited 3 or more months for confirmation votes – only to be confirmed unanimously.

Proceeding this way will put our judiciary on a dangerous course, as the Department of Justice projects that fully half of the Federal judiciary will be vacant by 2020 if we continue on the current pace of judicial confirmations. The real harm of this political game-playing falls on the American people, who turn to the courts for justice. By denying these nominees a simple up-or-down vote, the Republican leadership is undermining the ability of our courts to deliver justice to those in need. All Americans depend on having well-qualified men and women on the bench to resolve important legal matters – from working mothers seeking timely compensation for their employment discrimination claims to communities hoping for swift punishment for perpetrators of crimes to small business owners seeking protection from unfair and anticompetitive practices.

As a former Senator, I have the greatest respect for the Senate's role in providing advice and consent on judicial nominations. If there is a genuine concern about the qualifications of judicial nominees, that is a debate I welcome. But the consistent refusal to move promptly to have that debate, or to confirm even those nominees with broad, bipartisan support, does a disservice to the greatest traditions of this body and the American people it serves. In the 107th Congress, the Judiciary Committee reported 100 judicial nominees, and all of them were confirmed by the Senate before the end of that Congress. I urge the Senate to similarly consider and confirm my judicial nominees.

Sincerely,

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned below the word "Sincerely,".