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United States Senate
WASHINGTON, DC 20510-0104

July 8, 2009

The Honorable Sonia Sotomayor
Office of the Counsel to the President
The White House
Washington, DC 20500

Dear Judge Sotomayor:

Thank you very much for the information that you have provided to the Committee thus far during the confirmation process. This letter follows up on information you provided in response to question 16 of your questionnaire. In question 16(a)(ii), you were asked "whether you practiced alone, and if so, the addresses and dates." You answered as follows:

> Yes, with the firm Sotomayor & Associates, 10 3rd Street, Brooklyn, New York 11231, from 1983 to 1986, but this work was as a consultant to family and friends in their real estate, business, and estate planning decisions. If their circumstances required more substantial legal representation, I referred the matter to my firm, Pavia & Harcourt, or to others with appropriate expertise.

Questionnaire at 143-144. You also indicated that you were the "owner" of Sotomayor & Associates. *See* Questionnaire at 145.

You also indicated that you were employed in other legal capacities during that same time period from 1983 to 1986. Until March 1984, you were an Assistant District Attorney with the New York County District Attorney's Office; from April 1984 to December 1987, you were an associate with the law firm Pavia & Harcourt; and from January 1988 to 1994, you were a partner at Pavia & Harcourt. *See* Questionnaire at 144.

Recently, the *New York Times* published an article detailing your work as a solo practitioner with Sotomayor & Associates. According to the article, a former colleague said that outside work at the District Attorney's office was expressly prohibited during the time you were there. The White House separately confirmed that you earned income from Sotomayor & Associates that was reported on your tax returns. At least three former clients were identified, including one for whom you performed legal services "a few years after" you said you had stopped your outside work in 1986. Finally, Sotomayor & Associates was never incorporated.

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Your answers and the recent public statements have raised a number of issues regarding your legal work as owner of Sotomayor & Associates. Most apparent is the fact that you indicated in your questionnaire that this was solo practice, but the firm name suggests otherwise. As a result, we require additional information regarding your work with Sotomayor & Associates in order better to determine whether that work was consistent with the Code of Professional Responsibility as defined by the American Bar Association and the New York Bar Association. In order fully to determine the nature of your legal work with Sotomayor & Associates, and so that Senators may properly focus on other issues at your confirmation hearing, please provide complete answers to the following questions as soon as possible:

1. Was Sotomayor & Associates organized as a corporate entity? If so, in what form?

2. Before you started Sotomayor & Associates, did you seek consent from the New York County District Attorney's Office to do so? If so, from whom and in what manner?

3. Did the District Attorney's Office consent to your starting Sotomayor & Associates?

4. What was the policy of the District Attorney's Office regarding whether it was permissible for Assistant District Attorneys to form an outside law firm or work with an independent law firm?

5. Before you started your position as an associate with Pavia & Harcourt, did you inform the firm that you had established an independent firm? If so, whom did you inform and in what manner?

6. If so, did Pavia consent to your work with the independent solo firm? If so, who consented and in what manner?

7. What steps did you take at both the District Attorney's Office and at Pavia & Harcourt to avoid any ethical conflicts between client representations?

8. What type of work did you perform with Sotomayor & Associates?

9. Did you, or anyone associated with Sotomayor & Associates, ever represent a client before a court or other judicial body?

10. What specific clients did you represent at Sotomayor & Associates? Please provide the names for all of the clients represented, even if those clients were later referred to Pavia & Harcourt or other firms.

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11. Did you ever have a client sign a retainer agreement with Sotomayor & Associates?

12. Did you perform any other solo work other than from 1983 to 1986 as currently indicated on your questionnaire? If so, when and in what capacity?

13. Did you ever receive any compensation – monetary, in kind, or otherwise – for recommending a client to another firm while you were working as an Assistant District Attorney? If so, how were you compensated?

14. Did you receive any fee, barter, or in kind services in exchange for the legal services you provided to clients at Sotomayor & Associates?

15. Did you ever send out a bill for your work with Sotomayor & Associates?

16. What percentage of your work at Sotomayor & Associates was pro bono?

17. Please identify any associates who worked for you at Sotomayor & Associates, and in what capacity.

18. Did Sotomayor & Associates advertise? If so, how?

19. Did you have any separate letterhead for Sotomayor & Associates? If so, please describe how that letterhead was used.

20. Was income from Sotomayor & Associates reported on your tax returns? If so, indicate the years income was reported, how it was reported, and the amount.

Thank you again for the great deal of information you have provided to the Committee during the confirmation process. This information is important to permit Senators to evaluate your record appropriately under the significant time constraints that have been imposed.

I look forward to receiving your response as soon as possible prior to the hearing.

Very truly yours,

Jeff Sessions
United States Senator

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ALABAMA

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The Honorable Sonia Sotomayor
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Dear Judge Sotomayor:

Thank you for responding to the Senate Judiciary Committee questionnaire regarding your nomination to the United States Supreme Court and for submitting additional materials on June 5, June 15, and June 19. After reviewing the materials you submitted, there are several additional points of concern regarding your decision whether to recuse yourself from several cases. In order that Senators may focus on other issues during your confirmation hearing, please provide separate answers for each individually-numbered question below as soon as possible.

According to your questionnaire, you recused yourself from *Cohen v. Empire Blue Cross & Blue Shield*, which you list as docket number 94-241, citing your use of Blue Cross as an insurer, and because you were "involved in a court subcommittee that addressed Blue Cross policy changes" as your reasons for recusal. An electronic search for cases with docket number 94-241 does not retrieve a case captioned *Cohen v. Empire Blue Cross & Blue Shield*. If we assume, however, that you did recuse yourself from this case, it appears that you failed to recuse yourself from two subsequent cases to which Blue Cross was also a party: *Calogera Abbruscato v. Empire Blue Cross & Blue Shield*, 274 F.3d 90 (2d Cir. 2001), and *Devlin v. Empire Blue Cross & Blue Shield*, 274 F.3d 76 (2d Cir. 2001). **(1) Please clarify whether you recused yourself from the first Blue Cross case. If you recused from the first case but not the two more recent cases, please explain why you recused from the first but not the subsequent cases.**

Similarly, your questionnaire indicates that you recused yourself from *United States v. Giffen*, Docket No. 05-5782, 473 F.3d 30 (2d Cir. 2006), although you had "no recollection of the reason." Electronically-available versions of the opinion rendered in the case reflect that you did participate in its disposition. **(2) Please confirm that you did not participate in the disposition of the case and indicate when precisely during the proceedings you recused.**

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Alternatively, if you chose not to recuse yourself, please provide an explanation for that decision.

Additionally, it appears that you have taken a different position with respect to recusal in cases involving the Puerto Rican Legal Defense and Education Fund (PRLDEF) than in cases involving Pavia & Harcourt. In Part II, Question 2 of the questionnaire you submitted when you were nominated to the Court of Appeals for the Second Circuit, you addressed how you would respond to potential conflicts of interest:

> Because my former firm, Pavia & Harcourt, advises me on personal matters, I will continue to recuse myself from any matter in which my form[er] firm or its clients, or a former client with whom I worked are involved. Similarly, I will continue to recuse myself from hearing any matter involving an issue in which I participated while a member of the Board of Directors of the non-profit organizations described in Part III, Question 1. I will further recuse myself from any matter involving a client or associate of my husband-to-be. In all matters, I will follow the dictates of 28 U.S.C. § 455 and the Code of Judicial Conduct.

The non-profit organizations referenced above included PRLDEF, as well as the State of New York Mortgage Agency, the Stanley D. Heckman Educational Trust, New York State's Panel on Inter-Group Relations, and the New York City Campaign Finance Board. According to a 1992 *New York Times* article, you served as "a top policy maker" in PRLDEF "[f]or 12 years."
(3) Why did you employ a different standard of recusal for Pavia & Harcourt than you did for the Puerto Rican Legal Defense and Education Fund, in which you served as "a top policy maker"?

In *Grant v. Local 638*, 373 F.3d 104 (2d Cir. 2004), Alan Levine, a PRLDEF attorney, provided counsel on the brief for the plaintiffs. You did not recuse yourself from this case.
(4) Why did you not recuse yourself from this case? (5) Did you consider whether to recuse yourself from this case? If so, what factors did you consider, and what analysis did you perform?

Based on the excerpt quoted above, you pledged to recuse yourself from any PRLDEF matter "involving an issue in which [you] participated while a member of the Board of Directors." **(6)**

Did you determine that this case did not involve an issue in which you participated? (7) How did you define an "issue" for purposes of this analysis? Did you define it broadly—for example, "voting rights"—or did you define it more narrowly—for example, a matter which involved the setting of election districts in a particular area during a particular time?

Finally, you stated in your Supreme Court questionnaire that you served as a Member of the National Council of La Raza from 1998 to 2004 and that you recused yourself from a case in which that organization was a party. (We note that you listed the case only as "National Co. v. Dept. of Justice" in your questionnaire response.) Your questionnaire indicates that you recused not because of your membership in the organization, but because of your relationship with counsel—a former law clerk. **(8) Given that you were a Member of the National Council of La Raza, have you ever considered recusing yourself from cases to which they were a party or in which they intervened? If not, why not? (9) In reaching your decision whether to recuse yourself from a case involving this organization, what factors did you consider? What analysis did you employ? (10) Did any case involving the National Council of La Raza come before you between 1998 and 2004?**

Thank you for the time and effort you have devoted to providing the Committee with information concerning your nomination. These additional questions are also important to permit Senators to evaluate your record properly in advance of the hearings, especially given the significant time constraints that have been imposed.

Thank you for your attention to these matters. I look forward to receiving your response.

Very truly yours,

Jeff Sessions
United States Senator