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Judge Sotomayor and Race — Results from the Full Data Set

Posted By [Tom Goldstein](#) On May 29, 2009 @ 10:27 pm In [Uncategorized](#) | [Comments Disabled](#)

I've now completed the study of every one of Judge Sotomayor's race-related cases that I mention in the post below. I'll write more in the morning about particular cases, but here is what the data shows in sum:

Other than *Ricci*, Judge Sotomayor has decided 96 race-related cases while on the court of appeals.

Of the 96 cases, Judge Sotomayor and the panel rejected the claim of discrimination roughly 78 times and agreed with the claim of discrimination 10 times; the remaining 8 involved other kinds of claims or dispositions. Of the 10 cases favoring claims of discrimination, 9 were unanimous. (Many, by the way, were procedural victories rather than judgments that discrimination had occurred.) Of those 9, in 7, the unanimous panel included at least one Republican-appointed judge. In the one divided panel opinion, the dissent's point dealt only with the technical question of whether the criminal defendant in that case had forfeited his challenge to the jury selection in his case. So Judge Sotomayor rejected discrimination-related claims by a margin of roughly 8 to 1.

Of the roughly 75 panel opinions rejecting claims of discrimination, Judge Sotomayor dissented 2 times. In *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642 (1999), she dissented from the affirmance of the district court's order appointing a guardian for the plaintiff, an issue unrelated to race. In *Gant v. Wallingford Bd. of Educ.*, 195 F.3d 134 (1999), she would have allowed a black kindergartner to proceed with the claim that he was discriminated against in a school transfer. A third dissent did not relate to race discrimination: In *Pappas v. Giuliani*, 290 F.3d 143 (2002), she dissented from the majority's holding that the NYPD could fire a white employee for distributing racist materials.

As noted in the post below, Judge Sotomayor was twice on panels reversing district court decisions agreeing with race-related claims - *i.e.*, reversing a finding of impermissible race-based decisions. Both were criminal cases involving jury selection.

The numbers relating to unpublished opinions continued to hold as well. In the roughly 55 cases in which the panel affirmed district court decisions rejecting a claim of employment discrimination or retaliation, the panel published its opinion or order only 5 times.

In sum, in an eleven-year career on the Second Circuit, Judge Sotomayor has participated in roughly 100 panel decisions involving questions of race and has disagreed with her colleagues in those cases (a fair measure of whether she is an outlier) a total of 4 times. Only one case (*Gant*) in that entire eleven years actually involved the question whether race discrimination may have occurred. (In another case (*Pappas*) she dissented to favor a white bigot.) She participated in two other panels rejecting district court rulings agreeing with race-based jury-selection claims. Given that record, it seems absurd to say that Judge Sotomayor allows race to infect her decisionmaking.

Though the study dealt with panel opinions, Jonathan Adler helpfully reminds me of Judge Sotomayor's dissent in *Hayden v. Pataki* — which I discuss [1] [here](#) — in which she urged that felon disenfranchisement laws violate the Voting Rights Act.

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