

**STUDY BY THE MAJORITY STAFF
OF THE SENATE JUDICIARY COMMITTEE**

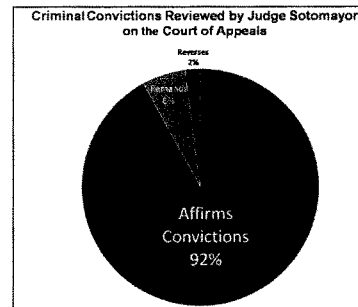
**SONIA SOTOMAYOR:
THE CRIMINAL JUSTICE RECORD**



A comprehensive study of Judge Sotomayor's appellate decisions demonstrates a consistent record of following the rule of law in upholding convictions and sentences in criminal cases. Based on a review of her more than 800 appellate criminal cases, Judge Sotomayor is a traditional, consensus judge on criminal justice issues.

SUMMARY OF RESULTS

In more than ten years on the Second Circuit Court of Appeals, Judge Sotomayor affirmed criminal convictions 92 percent of the time and reversed convictions only 2 percent of the time.¹ Judge Sotomayor was particularly consistent in upholding convictions involving the most serious offenses. In violent crime cases, she affirmed convictions 98 percent of the time, including significant bombing and terrorism cases.² Similarly, her affirmance rates were consistently high in cases involving illegal firearms (98 percent), drug offenses (93 percent), criminal immigration violations (92 percent), and economic crime (93 percent).



Judge Sotomayor is a moderate judge whose decisions in criminal cases rarely diverge from those of her judicial colleagues. For example, Judge Sotomayor sat with Republican-appointed judges on more than 400 criminal cases as an appellate judge, considering the same arguments and evidence. She agreed with all Republican-appointed judges in the same case 97 percent of the time; she agreed with at least one Republican-appointed judge in the same case 99 percent of the time.

Judge Sotomayor has a strong record of fairness in considering challenges to police searches and considering the government's position in criminal cases. On appeal, she upheld police searches 90 percent of the time. When the government appealed adverse lower court rulings, she agreed with the government 92 percent of the time. In these cases, Judge Sotomayor was fair and consistent in applying the law, even at times disagreeing with her Republican-appointed colleagues who wanted to overturn a conviction that she would have affirmed.³

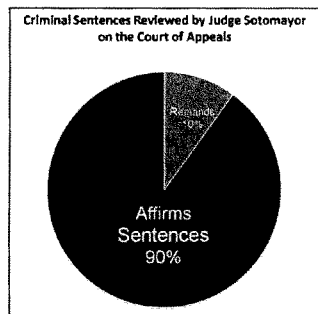
¹ The remaining 6 percent of cases were remanded to the lower trial court for further factual or legal findings. Even in the small number of cases she reversed, she often only reversed partially, affirming numerous counts as well.

² See *U.S. v. Vallee*, 304 Fed. Appx. 916 (2d Cir. 2008) (affirmed convictions and life sentences imposed in car bombing which killed a federal witness); *U.S. v. Paracha*, 313 Fed. Appx. 347 (2d Cir. 2008) (affirmed terrorism conviction for material support of Al Qaeda).

³ See *U.S. v. Yakobowicz*, 427 F.2d 144 (2d Cir. 2005) (Judge Sotomayor dissented, arguing conviction in tax case should be affirmed; two Republican-appointed judges wrote for the majority, overturning the conviction).

Judge Sotomayor's written opinions show restraint and careful adherence to the law in criminal cases. In *United States v. Tomasi*, Judge Sotomayor wrote separately in affirming a drug conviction in order to caution her fellow judges hearing the same case:

[T]he majority abandons a well-established principle of sound, responsible jurisprudence--that courts have a duty to refrain from deciding issues whose resolution is not necessary to the disposition of a case. . . . While clarity in the law is always to be desired, judges should not indulge themselves by reaching out to decide issues not squarely before them in order to accomplish this result.⁴



Judge Sotomayor also affirmed challenges to criminal sentences 90 percent of the time, including significant upward departures in child pornography and organized crime cases.⁵ This affirmance rate included 10 percent of cases where the court of appeals affirmed the sentence against all challenges, but nonetheless automatically remanded the case as required by new rulings from the Supreme Court or Second Circuit Court of Appeals.⁶

METHODOLOGY

The study conducted by staff included a review of all criminal cases heard by Judge Sotomayor on the Second Circuit Court of Appeals between 1998 and 2009. In total, staff reviewed more than 800 criminal cases, including every case in which Judge Sotomayor wrote an opinion or joined in a summary, *per curiam*, or *en banc* opinion. The study did not include civil cases involving criminal issues, or civil habeas corpus petitions involving post-conviction review of criminal cases. If multiple opinions were issued in one case, it was only considered to be one case.

The study only considered a conviction or a sentence to be "affirmed" if all counts of the conviction or all portions of the sentence were affirmed. If any count of a conviction or any portion of a sentence was reversed or remanded, the case was not considered to be "affirmed," except for the sentences subject to automatic remand noted above. If the study had considered these partial affirmances, the overall affirmance rates would be even higher.

SPECIFIC FINDINGS

The study's principal findings were as follows:

⁴ 313 F.3d 653, 660-662 (2d Cir. 2002) (Sotomayor, J., dissenting).

⁵ See *U.S. v. Adrignola*, 2009 WL 180303 (2d Cir. Jan 27, 2009) (affirmed 49-month upward departure in child pornography sentence); *U.S. v. Gravano*, 82 Fed. Appx. 736 (2d Cir. 2003) (affirmed upward departure for criminal history in conviction of former Gambino Family underboss).

⁶ The Second Circuit Court of Appeals automatically remanded for resentencing cases affected by the Supreme Court's new rulings in *United States v. Booker*, 543 U.S. 220 (2005), *United States v. Blakely*, 542 U.S. 296 (2004), and *United States v. Kimbrough*, 552 U.S. 85 (2007), as well as Second Circuit Court of Appeals rulings in *United States v. Williams*, 558 F.3d 168 (2d Cir. 2009) and *United States v. Whitely*, 529 F.3d 150 (2d Cir. 2008). In these cases, the lower court had not had the opportunity to consider these new precedents in originally imposing sentence.

**A STUDY OF JUDGE SONIA SOTOMAYOR'S CRIMINAL RULINGS
ON THE SECOND CIRCUIT COURT OF APPEALS**

<u>Criminal Convictions:</u>	92% Affirmed 6% Remanded 2% Reversed
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Violent Crime Cases	98% Affirmed
Illegal Firearm Cases	98% Affirmed
Drug Cases	93% Affirmed
Immigration Crime Cases	92% Affirmed
Economic Crime Cases	93% Affirmed

<u>Criminal Sentences:</u>	90% Affirmed 10% Remanded
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Rule of Law Judge:

Agrees with All Republican-Appointed Judges Hearing Same Case	97% of the time
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Agrees with One or More Republican-Appointed Judges Hearing Same Case	99% of the time
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Police Searches:	90% Upheld
Government Appeals:	92% Upheld