

AFJ NOMINEE REPORT

# PATRICK BUMATAY

*U.S. Court of Appeals for the Ninth Circuit*

On October 15, 2019, President Trump nominated Patrick Bumatay to the United States Court of Appeals for the Ninth Circuit, for the seat held by Carlos Bea, who will be taking senior status. He is the first [Filipino-American](#) and second [openly gay](#) person nominated to the federal bench by President Trump.

Bumatay – just 41 years old -- is being nominated over the objections of both of California’s senators. In fact, Bumatay has no judicial experience and limited experience as an appellate lawyer, but was nominated because he is a reliable ideologue. He worked as an associate at Morvillo Abramowitz in New York for two years and has worked as a line prosecutor in the U.S. Attorney’s Office for the Southern District of California for just five years - where he has only tried eight cases to verdict. He has extremely limited appellate experience; in his words, he has “drafted several appellate briefs.” He was not even a member of the U.S. Attorney’s Office Appellate Section [until](#) March 2019, notably five months after President Trump first announced his intent to nominate him to be an appellate judge.

In contrast, his experience advancing the cause of the Republican Party is extensive. Bumatay, a member of the Federalist Society since 2003, worked on the Bush Cheney campaign in both 2000 and 2004. He was President of the Yale College Republicans and Vice President of the Harvard Law School Republicans. After law

school and a clerkship with Judge Timothy Tymkovich, he [worked](#) at the Justice Department on the confirmations of Chief Justice John Roberts and Samuel Alito and former Attorney General Michael Mukasey. After President Trump became president, he left his role as a line prosecutor and volunteered to be detailed to work beside senior political leadership at the Justice Department. While there, he won an [award](#) for his work on Neil Gorsuch’s confirmation.

Bumatay’s nomination to the Ninth Circuit comes in the wake of President Trump’s repeated attacks on the independence of the ninth circuit, and his stated desire to obtain different rulings. The President has said the court is a “[big thorn](#)” in his side, and has called the court a “[dangerous disgrace](#),” a “[complete & total disaster](#),” and “[out of control](#).” He has threatened to “[put in a major complaint](#)” about the court.

The White House pointedly avoided meaningful consultation with both of Bumatay’s home-state senators, Dianne Feinstein and Kamala Harris, who have criticized Bumatay’s record. Neither senator has returned her blue slip on his nomination. As Senator Feinstein [wrote](#) when Bumatay was first nominated, “I repeatedly told the White House I wanted to reach an agreement on a package of 9th Circuit nominees, but last night the White House moved forward without consulting me, picking controversial candidates from its initial list [of potential

ninth circuit nominees] and another individual with no judicial experience who had not previously been suggested,” Senator Harris [stated](#), “I first objected to Mr. Bumatay after his initial nomination to the Ninth Circuit a year ago and again raised concerns about his qualifications and fitness when he was nominated for the district court. Mr. Bumatay has a troubling prosecutorial record, lacks the requisite experience, and has drawn criticism from members of California’s legal community, across party lines. It is clear that he lacks the judgment and qualifications to serve on the Ninth Circuit.”

Tellingly, Trump’s conservative base insisted he not even negotiate with California’s senators or make any effort to nominate consensus picks for the court. After initial (but incorrect) reports that Trump was negotiating with Senators Feinstein and Harris, conservative talk show host Hugh Hewitt [said](#), “[c]aving on the 9th Circuit Court of Appeals nominees burdens every GOP senator up for reelection in 2020 and may cost President Trump a significant percentage of the vote in key swing states.” The *Wall Street Journal* [said](#) that “remaking the federal judiciary may be the only thing a Republican Senate can accomplish in divided government. The White House shouldn’t water down” its nominees “to please Democrats.”

As the Senate reviews Bumatay’s nomination, several aspects of his slim record appear noteworthy. As a lawyer, in a case called *United States v. Ibarra*, Bumatay had obtained a conviction in a drug case. On appeal to the Ninth Circuit, however, the defendant [alleged](#) that Bumatay, at least a dozen times, solicited improper testimony from DEA agents on the stand, despite being warned by the judge to avoid doing so. In clear violation of precedent, Bumatay repeatedly asked the DEA agents to weigh in on the defendant’s credibility, and “[n]ot only did the prosecutor ask the agents to testify on Ms. Ibarra’s credibility – he then flipped the equation and proceeded to ask *Ms. Ibarra* to testify on the *agents’* credibility.” Judging credibility and truthfulness is supposed to be the sole responsibility of the jury. As the appeal brief stated, “the prosecutor was improperly treading on the jurors’ factfinding role by telling them who to believe and who not to believe.”

Tellingly, the government [admitted](#) error on appeal and his case was [reversed](#) and remanded. Given his limited experience, it is revealing that in one of his significant cases he was admonished by the Ninth Circuit for prosecutorial misconduct.

Finally, in college, he was critical of diversity programs at Yale. He [wrote](#) that “the sense of being a Yalensian no longer exists” and that “the loss of a Yale identity began with the institution’s obsession with diversity.” He also wrote that the programs

“brand the Scarlet AA (for affirmative action) on all minority students.”

In sum, given Bumatay’s lack of experience, partisan career and lack of support from home-state senators, Alliance for Justice opposes his confirmation.