Senator Grassley
Questions for the Record

Irma Carrillo Ramirez,
Nominee, U.S. District Judge for the Northern District of Texas

1. **As amended on December 1, 2015, Federal Rule of Civil Procedure 26(b)(1) defines the "scope of discovery" in litigation matters as "any nonprivileged matter that is relevant to any party's claim or defense *and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.*"**

   Chief Justice Roberts explained in his 2015 Year-End report that these amendments "make a significant change, for both lawyers and judges."

   a. **What is the effect of this amendment to Rule 26(b)(1)?**

      Response: It expressly limits the general scope of discovery from that which is relevant to a claim or defense to that which is more narrowly tailored and "proportional" to the specific needs of a case.

   b. **If confirmed, how would you assess whether a discovery request is "proportional to the needs of the case"?**

      Response: I will continue to apply Rule 26(b)(1), as amended, and to consider the factors that have now been expressly enumerated for consideration, which are listed above.

   c. **How, if at all, would your assessment of whether a discovery request is "proportional to the needs of the case" differ from your view of the scope of discovery under the prior version of the rule?**

      Response: In the context of permissible discovery, the Supreme Court has defined the term "relevant" very broadly, so a much broader range of discovery was generally permissible under the prior version of the rule. The amendment now expressly requires assessment of whether requested discovery is proportional to the needs of the case as part of the initial consideration of permissible relevant discovery.

2. **The Chief Justice's 2015 Year-End report also noted reports from litigants that "[a] judge who is available for prompt resolution of pretrial disputes saves parties time and money."**

As amended on December 1, 2015, Rule 16 requires a district judge to issue a scheduling order within "the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared." This amendment shortened both applicable deadlines by 30 days.

a. **Please explain the approach you will take to case management and the tools you will use to manage cases in a just and efficient manner if you are confirmed.**

   Response: I will continue my efforts to justly and efficiently manage my docket by promptly reviewing new filings and issuing scheduling or briefing orders, requiring the parties to meet and file status reports, ruling on motions as expeditiously as possible, ordering alternative dispute resolution when appropriate, ordering parties to be more involved in the discovery process in cases with numerous discovery disputes, making effective and informed use of all available resources and personnel, and working very hard.

b. **Please explain and describe any effect the 2015 amendments to the Federal Rules of Civil Procedure will have on your approach to case management if confirmed.**

   Response: Because the 2015 amendments to the Federal Rules of Civil Procedure shortened certain time frames, as a U.S. Magistrate Judge, I modified some of my standard scheduling orders and practices in order to comply with the changes in the rule when the amendments went into effect. If confirmed as a U.S. District Judge, I will continue to comply with the shortened time frames to ensure effective case management.

3. **As you know, parties frequently propose protective orders for the approval of the district judge during the course of discovery. The 2015 amendments to the Federal Rules of Civil Procedure included a change to Rule 26(c)(1)(B) adding "allocation of expenses" to the list of items that may be included in a protective order.**

   a. **How would you evaluate cost-allocation mechanisms included in proposed protective orders, if confirmed?**

      Response: I will evaluate cost-allocation mechanisms under the standards set forth in Rule 26(c), as amended, as well as the relevant controlling precedent.

   b. **Under what circumstances, if any, would you consider ordering allocation of expenses pursuant to Rule 26(c)(1)(B) absent suggestion of the parties?**

      Response: I would not issue an order for allocation of expenses absent a motion for protective order from the parties under Rule 26(c).

c. **Do you understand the 2015 amendment to Rule 26(c)(1)(B) to confer upon the district court a new authority or obligation to manage discovery costs through cost allocation?**

   Response: No. The prior version of the rule provided authority to manage discovery costs through cost allocation.

d. **How, if at all, do you understand the cost-allocation provisions of Rule 26(c)(1)(B) to relate to those found in Rule 37?**

   Response: Both rules provide a means for the use of cost allocation to curb abusive or unreasonable discovery practices.

4. What is the most important attribute of a judge, and do you possess it?

Response: The judges that I have admired most all exhibited a combination of attributes, including integrity, high intellect, an incredible work ethic, a commitment to justice, a love of the law, kindness, humility, the ability to relate to all persons, and a sense of humor. I continue to aspire to the example they have set.

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: Appropriate judicial temperament encompasses the willingness and ability: to truly listen and consider parties' positions with an open mind, to be courteous and respectful of persons and positions, to be patient, to apply the law to the facts fairly and impartially, to understand how decisions affect parties, to communicate effectively with attorneys, parties, witnesses and jurors so that all participants understand decisions and proceedings, and to behave in a manner that instills confidence in the judiciary and the judicial system. Most important is the ability to discern which element is most needed in a given situation. This is the standard to which I continue to aspire.

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I am committed to following the precedents of higher courts faithfully and giving them full force and effect, as evidenced in the thousands of legal opinions that I have authored over the past 14 years.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what**

sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: When dealing with issues of first impression, I have first looked to the text of the law. If it is clear, that has resolved the issue. If it is ambiguous, then I have looked to relevant persuasive authority from other federal circuit courts of appeal and district courts, principles of statutory construction, and Supreme Court and Fifth Circuit cases involving analogous issues or laws.

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I would apply the decision of the Supreme Court or the Fifth Circuit Court of Appeals.

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: The Supreme Court has held that a statute should be held unconstitutional if Congress has exceeded its authority or enacted a law in violation of the Constitution. There is a presumption that a statute is constitutional, however, and a court should not decide the constitutionality of statute unless that determination is necessary for resolution of the case.

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: No.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I believe that my commitment to the application of precedent and the text of the law is evidenced in the thousands of legal opinions I have authored over the past 14 years.

12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I believe that my commitment to fairness and impartiality to the litigants who appeared before me is evidenced in the thousands of legal opinions that I have authored over the past 14 years.

13. If confirmed, how do you intend to manage your caseload?

Response: I will continue my efforts to efficiently and fairly manage my docket based on my federal judicial experience, active case management, effective and informed use of all available resources and personnel, and hard work. Application of the Speedy Trial Act will require prioritization of criminal cases in which it has not been waived, and requests for temporary restraining orders and preliminary injunctions may require prioritization over older civil matters in some instances.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, judges have a role in controlling the pace and conduct of litigation. I will continue my efforts to actively manage my docket by promptly issuing scheduling orders, requiring the parties to file status reports, ruling on motions as expeditiously as possible, ordering alternative dispute resolution when appropriate, making effective and informed use of all available resources and personnel, and working very hard.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: I review the parties' filings to ensure that I fully understand: (1) the legal issues presented, (2) the parties' respective positions, and (3) their legal and factual support for those positions. Subsequently, I look to the text of the statute (if applicable) and conduct independent legal research to ensure that I have considered and applied all controlling precedent from the Supreme Court and the Fifth Circuit Court of Appeals, whether or not it has been cited by the parties. If there is no controlling precedent, I consider relevant persuasive authority from other federal circuit courts of appeal and district courts, principles of statutory construction, and Supreme Court and Fifth Circuit cases involving analogous issues or laws.

16. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?

Response: Judicial decisions should be guided by controlling precedent.

17. Please describe with particularity the process by which these questions were answered.

Response: I received and reviewed these questions on September 14, 2016, and I drafted and submitted responses to the United States Department of Justice's Office of Legal Policy on September 15, 2016. Subsequently, I finalized my answers for submission to the Senate Judiciary Committee on September 19, 2016.

18. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senate Committee on the Judiciary
Senator Thom Tillis

Irma Carrillo Ramirez
Nominee, U.S. District Judge for the Northern District of Texas

1. **Some individuals have argued that the United States Constitution is a "living document," subject to different interpretations as society changes. Do you subscribe to this point of view?**

   Response: As a U.S. Magistrate Judge for the past 14 years, I have been and continue to be bound to apply precedent from the Supreme Court and the Fifth Circuit Court of Appeals concerning the interpretation of the Constitution. The Constitution can only be changed through the amendment process pursuant to Article V.

2. **What role, if any, should societal pressure or popular opinion play in interpreting statutes or the United States Constitution?**

   Response: Judicial decisions should be guided by controlling precedent. As a U.S. Magistrate Judge, I have been and continue to be bound to apply precedent from the Supreme Court and the Fifth Circuit Court of Appeals concerning the interpretation of statutes or the Constitution.

3. **Please define judicial activism. Is judicial activism ever appropriate?**

   Response: Black's Law Dictionary defines judicial activism as "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore governing texts and precedents." Black's Law Dictionary (10th ed. 2014). It is never appropriate.

4. **When, if ever, is it appropriate for a federal court to rule that a statute is unconstitutional?**

   Response: The Supreme Court has held that a statute should be held unconstitutional if Congress has exceeded its authority or enacted a law in violation of the Constitution. There is a presumption that a statute is constitutional, however, and a court should not determine the constitutionality of a statute unless that determination is necessary for resolution of the case.

5. **What is a fundamental right? From where are these rights derived?**

   Response: A fundamental right is a right which is "objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if [it was] sacrificed.'" *See Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted). A fundamental right is derived from the United States Constitution and Supreme Court precedent.

6. **Do you believe the First Amendment or any other provision of the United States Constitution protects private citizens and businesses from being required to perform services that violate their sincerely held religious beliefs?**

   Response: The Supreme Court has held that the government may not enact laws that suppress religious beliefs or practices. *See Church of the Lukumi Babalu Aye, Inc., v. City of Hialeah,* 508 U.S. 520, 523 (1993). Additionally, in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), the Supreme Court held that under the Religious Freedom Restoration Act, private citizens and businesses could not be substantially burdened in the exercise of their sincerely held religious beliefs.

7. **What level of scrutiny is constitutionally required when a statute or regulation related to firearms is challenged under the Second Amendment of the United States Constitution?**

   Response: The Supreme Court has held that a heightened level of scrutiny is required when reviewing a challenge to a statute or regulation related to firearms under the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570, 628 n. 27 (2008).

8. **Do you believe it is constitutional for states to require voters to show photo identification before being eligible to cast their vote?**

   Response: The Supreme Court has held that it is constitutional for states to require photo identification in order for voters to be eligible to cast votes. *See Crawford v. Marion County Election Board,* 553 U.S. 181 (2008); *but see Veasey v. Abbott*, __ F.3d __, 2016 WL 3923868 (5th Cir. 2016) (finding that the district court did not clearly err in finding that the state law's photo identification requirement had a discriminatory effect on voting rights).

9. **One challenge you will face as a federal judge is managing a demanding caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the cases on your docket? Will you give certain cases priority over others? If so, please describe the process you will use to make these decisions.**

   Response: Application of the Speedy Trial Act will require prioritization of criminal cases in which it has not been waived, and requests for temporary restraining orders and preliminary injunctions may require prioritization over older civil matters in some instances. Otherwise, I will continue my efforts to efficiently and fairly manage my docket based on my federal judicial experience, active case management, effective and informed use of all available resources and personnel, and hard work.

10. **Do you believe the death penalty is constitutional? Would you have a problem imposing the death penalty?**

    Response: The Supreme Court has held that the death penalty is constitutional, and I would faithfully apply all controlling precedent.