Senator Grassley
Questions for the Record

John Michael Vazquez,
Nominee, U.S. District Judge for the District of New Jersey

1. **What role, if any, do you believe a federal judge should play in both seeking justice for victims and punishment for the offenders with the need to rehabilitate offenders? Please explain.**

   Response: I believe that a federal judge must apply the relevant constitutional provisions and statutes, in light of binding precedent, in dealings with both victims and offenders. As to victims of crime, I would follow the Crime Victims' Rights Act, 18 U.S.C. § 3771. The Act requires, among other things, that victims be treated "with fairness and with respect for the victim's dignity and privacy." As to punishment and rehabilitation, those are two of the several factors that judges are required to consider by statute, 18 U.S.C. § 3553(a), when rendering a sentence.

2. **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." I realize you may not be aware of the specific context of this statement, but do you agree with that statement?**

   Response: I am not familiar with the statement by the President or the context in which the quoted statements were made. From my perspective, a federal judge in every case must be impartial, even-handed, and apply the binding law to the facts of the particular matter before him or her.

3. **What do you anticipate will be the most difficult part of transitioning from being a practicing attorney to federal judge? What steps are you taking to prepare yourself?**

   Response: If I am fortunate enough to be confirmed, I anticipate that the most difficult part of the transition will be learning how to effectively manage a large docket of cases. I believe that a critical part of a judge's role is to not only render fair decisions but also to render timely decisions. I am hopeful that I can draw upon my prior experience as First Assistant Attorney General, in which I was responsible for managing the daily operations of an office consisting of numerous divisions with of over 9,000 employees. In addition I would seek guidance and advice from my colleagues on the bench to learn how they effectively manage their dockets.

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

   Response: I believe that the most important attribute of a judge is an extension of the word itself: judgment. Subsumed within sound judgment are a litany of qualities, including integrity, fairness, patience, respect, obedience to the law, humility, and diligence. I do

believe that I have good judgment as demonstrated by my experience as a practicing attorney, both for the government and in private practice.

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: I believe that an appropriate judicial temperament consists of patience, respect, and humility. Respect extends to not only respect for the law but also respect for all those who appear in court. I believe that I meet this standard.

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 completely agree that a trial judge must faithfully apply binding Supreme Court precedent as well as controlling law from his or her Circuit. If fortunate enough to be confirmed, I am fully committed to following the precedents established by the Supreme Court and the Court of Appeals for the Third Circuit regardless of whether I agree or disagree with them.

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: In a case of first impression involving a statute, I would first look to the plain language of the statute itself. If the language of the statute were clear, it would end my inquiry. If not, I would apply the binding canons of statutory interpretation. If I still did not have a definitive answer, I would look to analogous cases decided by the Supreme Court of the United States and the Court of Appeals for the Third Circuit. Lastly, I would look to analogous cases decided by other federal courts for persuasive authority.

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 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: A federal judge must respect and follow the separation of powers among the three branches of government. Congress has the power to enact laws, and its laws are

presumed constitutional. Accordingly, a judge should not reach a constitutional question if there is another avenue on which to base his or her decision. However, a federal judge is required to strike down a statute if Congress exceeded its authority in passing the statute or if the statute violates the Constitution.

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: I do not believe that a judge should rely upon foreign law or world community views in determining the meaning of the Constitution of the United States of America.

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 treat the oath of office with utmost sincerity and respect. If fortunate enough to be confirmed and upon taking the oath, I am committing myself to following the text of the law and binding precedent. In addition, I believe that my record as a practicing attorney reflects a respect for, and adherence to, the rule of law.

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 assure the Committee that I would act with integrity and fairness in all matters, and that I would administer the law and justice even-handedly without regard to any personal views.

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

Response: I intend to manage my caseload as expeditiously as possible. In doing so, I would use all available tools for effective case management, set fair and reasonable deadlines by which the parties had to abide, and work with the magistrate judges. I would seek guidance and advice from my colleagues on the bench as to how they effectively manage their dockets. I also intend to draw upon my prior experience as First Assistant Attorney General, in which I was responsible for the daily operations of an office with many divisions and over 9,000 employees.

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: I do believe that judges have such a role. Reaching a fair and correct decision is crucial, but so is rendering a timely decision. To do so, a judge must be active in case management from the inception of a matter. For example, at the outset of a case, a judge should discuss with the parties the potential complexities of a case as well as anticipated issues. A judge should provide the parties with adequate and reasonable time to prepare

their cases, but a judge must also ensure that the parties abide by a fair and reasonable timetable.

15. Do you believe there is a right to privacy in the U.S. Constitution?

a. Where is it located?

Response: The Supreme Court of the United States has held that there is a right to privacy, in certain contexts, in the Constitution. For example, in Katz v. United States, 389 U.S. 347 (1967), the Supreme Court decided that there is a right against unreasonable searches and seizures pursuant to the Fourth Amendment.

b. From what does it derive?

Response: The Supreme Court of the United States has determined that the right to privacy stems from the Constitution, such as the Fourth Amendment as discussed above.

c. What is your understanding, in general terms, of the contours of that right?

Response: My understanding is that the Supreme Court of the United States has viewed the right of privacy in light of protection from certain governmental action and has defined the contours through its precedent. In my practice as an attorney, both as a federal prosecutor and defense counsel, this issue has arisen most often in connection with the Fourth Amendment, specifically as to when law enforcement need, or need not, obtain a warrant.

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

Response: I received these questions from the Department of Justice, Office of Legal Policy (OLP) on July 29, 2015. I reviewed the questions, thought about them, and drafted my responses. I then submitted my responses to OLP and after some discussion with OLP, I finalized my responses and authorized their submission to the Committee on my behalf.

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

Response: Yes.

Senator Vitter
Questions for the Record

Paula Xinis,
Nominee, U.S. District Judge for the District of Maryland

1. **What are some acceptable indicia of probable cause when conducting a safety pat down of an individual that would elicit a more probing legal search for contraband or weapons?**
    a. **Would a small lump in the suspect's front pocket when looking for a weapon warrant a more exacting search?**
    b. **Would the crackling sound of a plastic baggy along with feeling a rigid or semi-rigid substance inside the baggy in the suspect's pants pocket when looking for a weapon warrant a more exacting search?**

Response: In *Terry v. Ohio*, 392 U.S. 1, 24 (1968), the United States Supreme Court held that an officer may conduct a warrantless pat-down search of a suspect lawfully detained for questioning where the officer reasonably believes that the suspect may be carrying a weapon. In *Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993), the Supreme Court further held that if an officer conducting a *Terry* authorized pat-down "feels an object whose contour or mass makes its identity immediately apparent" as contraband, the object may be lawfully seized. *Id. See also United States v. Swann*, 149 F.3d 271, 274-75 (4th Cir. 1998). If confirmed, I would faithfully apply controlling Supreme Court and Fourth Circuit precedent to the facts of every case in which this issue is presented.

2. **In your work as a criminal defense attorney, you have given many presentations on sentencing issues, and how to mitigate sentences. In these presentations, you recommended bringing in Bureau of Prison experts to attest to the prison systems "infirmities" and "help craft alternatives to prison." What are the crimes that you deem worthy of alternatives to prison and what alternative would you suggest for each one?**

Response: For any federal criminal case, the starting point and primary tool to determine the appropriate sentence is the United States Sentencing Guidelines. Certain offenses are also subject to statutory mandatory minimum terms of imprisonment that a sentencing court must apply absent narrowly tailored exceptions set forth in 18 U.S.C. § 3553(e) and (f). This statute at 18 U.S.C. § 3553(a) further states that the court shall consider when imposing sentence the nature and circumstances of the offense, and the need for the sentence imposed to reflect the seriousness of the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes and to provide the defendant with needed educational

or vocational training, medical care or other correctional treatment in the most effective manner. If confirmed, I would apply the Sentencing Guidelines, the statutory factors, and all relevant credible evidence when imposing any sentence.

3. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

   Response: With regard to applying binding case law, I firmly believe that judges are duty bound to following the binding precedent of the United States Supreme Court and respective Courts of Appeals regardless of any personal views. If confirmed, I will faithfully apply all relevant and binding precedent without regard to any personal views.

4. **What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: In *Nat'l Labor Relations Bd. v. Noel Canning*, 134 S. Ct. 2550, 2567 (2014), the United States Supreme Court concluded that "the phrase 'the recess' applies to both intra-session and inter-session recesses. If a Senate recess is so short that it does not require the consent of the House, it is too short to trigger the Recess Appointments Clause. And a recess lasting less than 10 days is presumptively too short as well." *Id.* (internal citations and quotations omitted). If confirmed, I would faithfully apply all Supreme Court precedent, including *Canning*, as well as any other binding precedent from the Fourth Circuit.

5. **In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the United States Supreme Court reaffirmed the holding of *Roe v. Wade*, but set a new standard for reviewing the constitutional validity of laws restricting abortions. The Court announced, in a plurality opinion, that if a state law imposes an "undue burden" or its "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability," the law does not pass constitutional muster. *Id.* at 878. Because this issue is being litigated in various federal courts throughout the country and may be raised in future cases over which I may preside, I do not believe it prudent for me to address this issue further. If confirmed, I would faithfully follow all binding precedent of the Supreme Court and the United States Court of Appeals for the Fourth Circuit for all matters, including those involving abortion.

6. **The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

   Response: *Roe v. Wade*, 410 U.S. 113 (1973), as affirmed, modified and clarified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) and *Gonzales v. Carhart*, 550 U.S. 124 (2007), is binding Supreme Court precedent.

7. **How do you reconcile the 2nd Amendment rights under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that individuals retain the right to keep and bear arms under the Second Amendment. The Court in *Heller* also noted the right to bear arms is not unlimited and that rational basis scrutiny would not be an appropriate level of review. *Id.* at 626, 628, n.27. The Fourth Circuit, applying *Heller*, has announced a two-pronged test to determine the constitutionality of a federal gun-control statute. *See United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010). Under *United States v. Chester*, a court must determine first whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guaranteed right to keep and bear arms. If the "challenged regulation burdens conduct that was in the scope of the Second Amendment," the Court must next determine what level of scrutiny it should apply in reviewing the constitutionality of the statute. *Id.* If confirmed, I will faithfully apply binding precedent in all cases, including those related to the constitutionality of firearms regulations.

Senator Vitter
Questions for the Record

John Michael Vazquez,
Nominee, U.S. District Judge for the District of New Jersey

1. **What is your opinion of the constitutionality of the majority ruling NLRB v. Canning and what would be your allowable time frame between pro forma sessions of the senate before the president can soundly exercise his recess appointment power? Is it 3 days? 4? 5?**

   Response: The majority's ruling in NLRB v. Canning, 134 S. Ct. 2550 (2014) is binding precedent which must be followed by all lower federal courts. As to the allowable time frame between *pro forma* sessions before the President can exercise his recess appointment power, the recess must be of "substantial length." Id. at 2561. A period of 3 days or less is not sufficient. Id. at 2566. In addition, a recess of more than 3 days but less than 10 days is "presumptively too short to fall within the [Recess Appointments] Clause." Id. at 2567. This presumption can only be overcome in a "very unusual circumstance – a national catastrophe, for instance, that renders the Senate unavailable but calls for an urgent response." Id.

2. **In your opinion, is it an undue burden on a woman seeking an abortion under Planned Parenthood v. Casey if a state requires that doctors performing the procedures have admitting privileges at one of the hospitals in the state to protect women's health and, as a result, all abortion clinics in the state are shut down?**

   Response: To my knowledge, neither the Supreme Court of the United States nor the Court of Appeals for the Third Circuit has addressed this issue. Cognizant of the legal and ethical responsibility to not pre-judge matters and to not offer a final opinion until having heard the factual evidence and reviewed all necessary legal sources, I can say that if presented with such a case, I would follow the analysis required by the Supreme Court of the United States as set forth in Planned Parenthood v. Casey, 505 U.S. 833 (1992) and its progeny.

3. **The Court's ruling on the right to privacy in Griswold v. Connecticut laid the foundation for Roe v. Wade. From your perspective, is Roe v. Wade settled law?**

   Response: Roe v. Wade, as well as later Supreme Court decisions that modified it (such as Casey, cited in the previous response, and Gonzales v. Carhart, 550 U.S. 124 (2007)), is binding precedent on all lower courts.

4. **What is your philosophy on judicial precedent and would you apply prior binding case law that resulted in a court decision that you personally disagree with?**

Response: My philosophy on judicial precedent is that a trial judge must faithfully apply binding Supreme Court precedent as well as controlling law from his or her Circuit. If fortunate enough to be confirmed, I am fully committed to following the precedents established by the Supreme Court and the Court of Appeals for the Third Circuit regardless of whether I agree or disagree with them.

5. **How do you reconcile the 2nd Amendment basic right under the Constitution to keep and bear arms made applicable to states under the 14th Amendment in McDonald v. City of Chicago with the more recent crop of lower federal court rulings upholding gun control laws, such as laws requiring gun registration, laws making it illegal to carry guns near schools and post offices, and laws banning bottom loading semi-automatic pistols for protection?**

Response: In McDonald v. City of Chicago, 130 S. Ct. 3020 (2010), the Supreme Court of the United States held that the Second Amendment was fully applicable to the states by way of the Fourteenth Amendment. In doing so, the Supreme Court cited to its prior opinion in District of Columbia v. Heller, 554 U.S. 570 (2008), which interpreted the scope of the Second Amendment and found that "the Second Amendment protects the right to keep and bear arms for the purpose of self-defense[.]" McDonald, 130 S. Ct. at 3026. This fundamental right includes the ability "to possess a handgun in the home for the purpose of self-defense." Id. at 3050. As to the scope of the Second Amendment, the Supreme Court in Heller observed that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." Heller, 554 U.S. at 626-27. If fortunate enough to be confirmed, I would apply binding precedent from the Supreme Court and the Third Circuit to all cases, including those relating to the Second Amendment.