

Senator Chuck Grassley, Ranking Member
Questions for the Record
Regina Rodriguez
Nominee to be United States District Judge for the District of Colorado

- 1. You have had an impressive career. What do you think makes you qualified to be a district judge?**

Response: I have over thirty years of experience practicing law. During that time, I have had the privilege of representing a wide array of clients in a diverse range of cases. Not only did I represent the United States for many years while at the U.S. Attorney's Office, I have also represented both plaintiffs and defendants in private practice in civil as well as criminal matters. In both the public and private sector, I gained significant trial experience.

I have tried more than 30 cases. I understand the pace of litigation, the rules of evidence and the importance of the rule of law. This practical and recent experience in the courtroom will bring credibility and practical application to my work should I be appointed as a district judge.

- 2. Do you think that your being a law firm partner and former prosecutor makes you more or less qualified to be a district judge?**

Response: I believe that my experience across a broad spectrum of practice areas, in both government and the private sector, on behalf of plaintiffs and defendants, corporations and private individuals, are experiences that would be helpful if confirmed as a district judge. I would note that while I worked in the U.S. Attorney's Office and the Department of Justice for several years, my role was as a civil attorney rather than as a criminal prosecutor.

- 3. In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

Response: "Super precedent" is not a term used or defined by the Supreme Court. If confirmed, my role as a district judge will be to strictly adhere to all precedent set forth by the Tenth Circuit and the Supreme Court.

- 4. Under the Supreme Court's First Amendment jurisprudence, can someone shout "fire" in a crowded theater?**

Response: Justice Holmes used the phrase "shouting fire in a crowded theater" in the seminal U.S. Supreme Court case, *Schenck v. United States*, 249 U.S. 47 (1919). This case articulated the test for limitations on free speech—the printed or spoken word may not be the subject of previous restraint or subsequent punishment unless its expression creates a clear and present danger of bringing about a substantial evil. Justice Holmes' statement, and subsequent Supreme Court precedent, suggest that both the content and context of speech are critical elements of a First Amendment analysis. *See e.g., F.C.C. v. Pacifica*

Found., 438 U.S. 726, 744 (1978). The *Schenck* test was modified by the Supreme Court in *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) which provided that speech could only be banned when it was directed to and likely to incite “imminent lawless action.” There is a large body of Supreme Court and Tenth Circuit precedent interpreting the First Amendment. If confirmed, I would strictly follow that precedent.

- 5. Do you agree with the Supreme Court’s statement in *Bostock v. Clayton County*, 590 U.S. ____ (2020), that the Free Exercise Clause lies at the heart of a pluralistic society? If so, does that mean that the Free Exercise Clause legally requires that religious organizations and individuals should be free to act consistently with their beliefs in the public square?**

Response: Writing for the majority in *Bostock*, Justice Gorsuch explained: “We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society.” *Bostock v. Clayton Cty.*, Georgia, 140 S. Ct. 1731, 1754, (2020). The text of the First Amendment protects the free exercise of religion. The Supreme Court has interpreted this provision in a number of cases. If confirmed, I would be bound by the Supreme Court’s interpretation and would follow that binding precedent.

- 6. Please explain, with detail, the process by which you became a district-court nominee.**

Response: In 2015, Colorado Senators Michael Bennet and Cory Gardner each appointed a Judicial Nominating Commission. I submitted an application to each Commission and was interviewed by Senator Gardner's Commission on October 20, 2015, and Senator Bennet's Commission on December 15, 2015. My name was one of three names recommended to Senator Bennet by his Commission. My name was one of four names recommended to Senator Gardner by his Commission. On January 7, 2016, I met with Senator Bennet and his staff in Denver. On January 26, 2016, I met with Senator Gardner in Denver. On February 9, 2016, Senators Bennet and Gardner sent their recommendations to the White House. I was one of three candidates recommended by both Senators; Senator Gardner recommended one additional candidate. After February 18, 2016, I was in contact with officials from the Office of Legal Policy at the Department of Justice. On April 4, 2016, I interviewed with attorneys from the White House Counsel’s Office and the Department of Justice in Washington, District of Columbia. On April 28, 2016, the President submitted my nomination to the Senate. I did not receive a hearing, and that nomination expired.

Early in 2021, I was contacted by Senator Bennet’s office to inquire whether I was willing to re-engage in the judicial nomination process. I spoke with Senators Bennet and Hickenlooper in mid-January. On January 27, 2021, I interviewed with attorneys from the White House Counsel’s Office, and since that time I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 3, 2020, Senators

Bennet and Hickenlooper recommended me to serve on the United States District Court for the District of Colorado. On March 30, 2021, the President announced his intent to nominate me.

- 7. Have you had any conversations with individuals associated with the group Demand Justice, including but not limited to Brian Fallon, or Chris Kang, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

Response: No.

- 8. Have you had any conversations with individuals associated with the American Constitution Society, including but not limited to Russ Feingold, in connection with this or any other potential judicial nomination? If so, please explain the nature of those conversations.**

Response: I spoke with Ellen K. Giarrantana in early 2021. Ms. Giarrantana indicated she was compiling a list of potentially qualified candidates for the vacant district court position in Colorado. She indicated she was a member of the American Constitution Society's Colorado chapter. She asked about my background and I referred her to my SJQ filed in 2016.

- 9. Please explain with particularity the process by which you answered these questions.**

Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed these questions, undertook legal research as necessary, and drafted all of my answers. I then shared my answers with the Office of Legal Policy for feedback before submitting my answers to the Committee.

- 10. Do these answers reflect your true and personal views?**

Response: Yes.

**Nomination of Regina M. Rodriguez
to be United States District Judge for the District of Colorado
Questions for the Record
Submitted May 5, 2021**

QUESTIONS FROM SENATOR COTTON

- 1. Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

Response: No.

- 2. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

Response: No.

- 3. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

Response: On May 5, 2021, these questions were forwarded to me by the Office of Legal Policy at the Department of Justice. I personally reviewed these questions, undertook legal research as necessary, and drafted all of my answers. I then shared my answers with the Office of Legal Policy for feedback before submitting my answers to the Committee.

- 4. Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Regina M. Rodriguez, Nominee for the District of Colorado

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. **Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's philosophy from Warren, Burger, Rehnquist, or Robert's Courts is most analogous with yours.**

Response: I do not ascribe to a particular judicial philosophy. I believe that a district judge should decide each case on the particular facts and law presented in that case. Federal courts are courts of limited jurisdiction. My approach, if I am confirmed, would be to determine whether the case is properly before me and, if so, to review and rule in each case based upon the admissible facts and controlling law.

2. **Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?**

Response: A district judge is bound by the interpretation of the Constitution as set forth by the U.S. Supreme Court. If confirmed, I would follow that and all other binding precedent if called upon to interpret the Constitution.

3. **President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.**

Response: As a nominee for the district court, I take no position on reforming the Supreme Court. This is a matter reserved for the legislative and executive branches.

4. **Do you personally own any firearms? If so, please list them.**

Response: No.

5. **Have you ever personally owned any firearms?**

Response: No.

6. **Have you ever used a firearm? If so, when and under what circumstances?**

Response: Yes. I have used firearms on several occasions for recreational

target practice.

7. Is the ability to own a firearm a personal civil right?

Response: Yes. The Second Amendment confers, “an individual right to keep and bear arms.” *District Court v. Heller*, 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago*, 561 U.S. 742 (2010) this right was identified as a fundamental right that applies to the states pursuant the Fourteenth Amendment.

8. Is the criminal justice system systemically racist?

Response: The term “systemically racist” is not a term defined under the law. There is evidence suggesting that people of color have been disproportionately impacted by the criminal justice system – for example, the U.S. Sentencing Commission has found that sentencing disparities still exist between similarly situated offenders based on their race. There is a rich body of federal jurisprudence specifically intended to ensure that all people are treated equally under the laws. If confirmed, I will follow the applicable federal precedent and strive to ensure that I am treating every litigant in my courtroom fairly.

**Questions for the Record for Regina M. Rodriguez
From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

Response: No.

b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

Response: No.

Senator Mike Lee
Questions for the Record
Regina M. Rodriguez, District of Colorado

1. How would you describe your judicial philosophy?

Response: I do not ascribe to a particular judicial philosophy. I believe that a district judge should decide each case on the particular facts and law presented in that case. Federal courts are courts of limited jurisdiction. My approach, if I am confirmed, would be to determine whether the case is properly before me and, if so, to review and rule in each case based upon the admissible facts and controlling law.

2. What sources would you consult when deciding a case that turned on the interpretation of a federal statute?

Response: I would start by reviewing the text of the statute in question. I would review and follow Tenth Circuit and Supreme Court precedent.

3. What sources would you consult when deciding a case that turned on the interpretation of a constitutional provision?

Response: I would start by reviewing the constitutional provision. I would review and follow Tenth Circuit and Supreme Court precedent.

4. What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?

Response: A district judge is bound by the interpretation of the Constitution as set forth by the United States Supreme Court. If confirmed, I would follow the Supreme Court and Tenth Circuit precedent regarding the text and its original meaning in both constitutional and statutory interpretation.

5. What are the constitutional requirements for standing?

Response: Supreme Court precedent instructs that the constitutional minimum for standing contains three elements. First, the plaintiff must have suffered an “injury in fact”; second, there must be a causal connection between the injury and the conduct complained of; and third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

6. Do you believe there is a difference between “prudential” jurisdiction and Article III jurisdiction in the federal courts? If so, which jurisdictional requirements are prudential, and which are mandatory?

Response: Justice Scalia explained in the majority opinion in *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126, (2014), that the

concept of “prudential” standing is “not exhaustively defined” and is “not derived from Article III.” The Supreme Court has, however, instructed that the doctrine encompasses at least three broad principles: “the general prohibition on a litigant’s raising another person’s legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff’s complaint fall within the zone of interests protected by the law invoked.” *Id.* If confirmed, I will be bound by the U.S. Supreme Court’s interpretation of Article III and its interpretation of relevant “prudential” considerations.

7. How would you define the doctrine of administrative exhaustion?

Response: The doctrine of administrative exhaustion instructs that a party must have taken advantage of the administrative remedies available to them before seeking judicial review. *See e.g. Myers v. Bethlehem Shipbuilding Corp.* 303 U.S. 41 (1938). Congress has included exhaustion requirements in many statutes. If confirmed, I will be bound by these statutes and binding precedent interpreting them.

8. Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?

Response: In *McCullough v. Maryland*, 17 U.S. 316 (1819), the Supreme Court recognized Congress’s implied powers derive from the “Necessary and Proper Clause” of the Constitution which grants Congress power to pass laws considered “necessary and proper” for effectively exercising its enumerated powers. In *McCulloch* the Court recognized Congress’s power to establish a national bank as one example of such powers.

9. Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?

Response: I would look to Tenth Circuit and Supreme Court precedent.

10. Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?

Response: The Supreme Court has instructed that the Constitution may protect rights that are not expressly enumerated in the Constitution. For example, in *Griswold v. Connecticut*, 381 U.S. 479 (1965) the Supreme Court held that a right to privacy can be inferred from the Constitution. If confirmed, I will be bound by the Supreme Court and Tenth Circuit interpretation of the Constitution and will strictly adhere to binding precedent.

11. What rights are protected under substantive due process?

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 703 (1997) the Supreme Court articulated its established method of substantive-due-process analysis and applied that analysis to the question of whether the right to commit suicide is protected as a fundamental right. “First, the due process clause protects those fundamental rights and liberties which are, objectively, deeply rooted in this nation’s history and tradition, *E.g. Moore v. East Cleveland*, 431 U.S. 494, 503. Second, the Court requires a ‘careful description’ of the asserted fundamental liberty interest. *E.g. Reno v. Flores*, 507 U.S. 292, 302 (1993).” *Id.* If I am confirmed as a district judge, I would follow this and other Supreme Court precedent as well as Tenth Circuit precedent.

- 12. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: My views of substantive due process will be guided by relevant Tenth Circuit and Supreme Court precedent.

- 13. What are the limits on Congress’s power under the Commerce Clause?**

Response: The Supreme Court has instructed that the proper test for determining whether an activity falls within Congress’s powers pursuant to the Commerce Clause requires an analysis of whether the regulated activity “substantially affects” interstate commerce. *United States v. Lopez*, 514 U.S. 549, 559 (1995). The three categories of activity that Congress may regulate under the Commerce Clause are: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, and persons or things in interstate commerce; and (3) “activities having a substantial relation to interstate commerce ... i.e., those activities that substantially affect interstate commerce.” *Id.* If confirmed, I will be bound by the Supreme Court and Tenth Circuit interpretations of the Commerce Clause and will strictly adhere to that binding precedent.

- 14. What qualifies a particular group as a “suspect class,” such that laws affecting that group must survive strict scrutiny?**

Response: The Supreme Court has identified particular classifications, such as those based on alienage, nationality and race to be inherently suspect. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1995). If confirmed, I will be bound by the Supreme Court and Tenth Circuit precedent on suspect classifications and will strictly adhere to that binding precedent.

- 15. How would you describe the role that checks and balances and separation of powers play in the Constitution’s structure?**

Response: The Constitution divides the government into three branches of

government: Legislative, Executive, and Judicial. Each of these branches checks and limits the powers of the others in order to ensure the securities and liberties guaranteed under the Constitution.

16. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: A branch cannot act without authority from the Constitution. To the extent that evidence demonstrated that a branch was acting in violation of its constitutional authority, that action would be unconstitutional. If confirmed, and if presented such a case, I would evaluate the facts presented and apply all applicable Supreme Court and Tenth Circuit precedent.

17. What role should empathy play in a judge's consideration of a case?

Response: None. It is the role of a district judge to adjudicate cases objectively and impartially in accordance with all applicable precedent.

18. What's worse: Invalidating a law that is, in fact, constitutional, or upholding a law that is, in fact, unconstitutional?

Response: Neither is desirable. If confirmed, I would work hard to avoid either.

19. From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?

Response: I cannot speak to the increase in the Supreme Court's invalidation of federal statutes. A judge must respect the policy-making role of the legislature. However, the role of an independent judiciary includes preserving and protecting the Constitution, which at times may involve finding a statute or part of a statute unconstitutional or unconstitutional as applied.

20. How would you explain the difference between judicial review and judicial supremacy?

Response: Judicial review refers to the authority of the Supreme Court to review the actions of the other branches of government and determine whether such actions are constitutional. Judicial supremacy is the concept that the Supreme Court is the authoritative interpreter of the Constitution and its decisions are binding on the other branches of government unless and until a Constitutional Amendment or subsequent Supreme Court decision overrules

them.

- 21. Abraham Lincoln explained his refusal to honor the Dred Scott decision by asserting that “If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.” How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?**

Response: I am not, nor have I ever been, an elected official. If confirmed as a district judge, I will take an oath to uphold the Constitution and would be obligated to follow the precedent of the Supreme Court and Tenth Circuit.

- 22. In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that’s important to keep in mind when judging.**

Response: The integrity of the court relies upon respect for judgment which in turn demands respect for the rule of law. Therefore, integrity and faithful adherence to precedent is paramount.

- 23. How would you describe your approach to reading statutes—how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: My approach would be to start with the language of the statute and any precedent interpreting that statute. If it is clear, my inquiry ends. If the statute is ambiguous, I would review binding Supreme Court and Tenth Circuit precedent. If there was no binding precedent on the issue, I would also consider persuasive authority from other federal courts.

- 24. As a district court judge, you would be bound by both Supreme Court precedent and prior circuit court precedent. What is the duty of a lower court judge when confronted with a case where the precedent in question does not seem to be rooted in constitutional text, history, or tradition and also does not appear to speak directly to the issue at hand? In applying a precedent that has questionable constitutional underpinnings, should a lower court judge extend the precedent to cover new cases, or limit its application where appropriate and reasonably possible?**

Response: A district judge should follow precedent regardless of whether he or she agrees with the decision or reasoning.

25. Do you believe it is ever appropriate to look past jurisdictional issues if they prevent the court from correcting a serious injustice?

Response: Federal courts are courts of limited jurisdiction and, if confirmed, I must be bound by those jurisdictional limits.

26. When sentencing an individual defendant in a criminal case, what role, if any, should the defendant's group identity(ies) (e.g., race, gender, nationality, sexual orientation or gender identity) play in the judges' sentencing analysis?

Response: The factors to be considered in sentencing are set forth in 18 U.S.C. §3553(a). The race, gender, nationality, sexual orientation or gender identity of an individual defendant is not an enumerated factor.

27. Would it ever be appropriate to sentence a defendant who belongs to a historically disadvantaged group less severely than a similarly situated defendant who belongs to a historically advantaged group to correct systemic sentencing disparities?

Response: No. If confirmed as a district judge, I would be bound by the sentencing factors Congress has set forth in federal law. The factors to be considered in sentencing are set forth in 18 U.S.C. §3553(a). One of the factors set forth in Section 3553(a)(6) includes the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: “Nominations”
April 28, 2021

For all nominees:

- 1. Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?**

Response: No.

- 2. Since becoming a legal adult, have you participated in any rallies or demonstrations where you or other participants have willfully damaged public or private property?**

Response: No.

- 3. Was *Marbury v. Madison* correctly decided?**

Response: Other nominees have acknowledge, and I agree that *Marbury v. Madison* was properly decided. It is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

- 4. Was *Brown v. Board of Education* correctly decided?**

Response: Other nominees have acknowledged, and I agree that *Brown v. Board of Education* was properly decided. It is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

- 5. Was *Loving v. Virginia* correctly decided?**

Response: Other nominees have acknowledged, and I agree that *Loving v. Virginia* was properly decided. It is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

- 6. Was *Roe v. Wade* correctly decided?**

Response: *Roe v. Wade* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

- 7. Was *United States v. Virginia* correctly decided?**

Response: *United States v. Virginia* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

8. Was *District of Columbia v. Heller* correctly decided?

Response: *District of Columbia v. Heller* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

9. Was *Boumediene v. Bush* correctly decided?

Response: *Boumediene v. Bush* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

10. Was *Citizens United v. FEC* correctly decided?

Response: *Citizens United v. FEC* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

11. Was *Obergefell v. Hodges* correctly decided?

Response: *Obergefell v. Hodges* is binding Supreme Court precedent. If confirmed, I would be bound to follow it and all other Supreme Court and Tenth Circuit precedent.

12. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the Constitution?

Response: The determination of when it is appropriate for an en banc court to consider its own precedent is not something upon which I would rule as a district judge. Generally, circuit courts determine whether to sit en banc pursuant to Fed. R. App. P. 35.

13. In the absence of controlling Supreme Court precedent, what factors determine whether it is appropriate for an en banc court to reaffirm its own precedent that conflicts with the original public meaning of the text of a statute?

Response: The determination of when it is appropriate for an en banc court to consider its own precedent is not something upon which I would rule as a district judge. Generally, circuit courts determine whether to sit en banc pursuant to Fed. R. App. P. 35.

14. If defendants of a particular minority group receive on average longer sentences for a particular crime than do defendants of other racial or ethnic groups, should that disparity factor into the sentencing of an individual defendant?

Response: The factors to be considered in sentencing are set forth in 18 U.S.C. §3553(a). One of these factors is, “The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18

U.S.C. §3553(a)(6). If confirmed as a district judge, I would consider all of the factors identified in the statute.

**Questions for the Record for
Senator Thom Tillis for
Questions for Ms. Regina Marie Rodriguez**

1. Ms. Rodriguez, do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?

Response: Yes.

2. What is judicial activism? Do you consider judicial activism appropriate?

Response: Judicial activism is where a judge renders a decision based upon her personal views rather than following precedent and adhering to the rule of law. A judge is duty-bound to follow the rule of law and judicial activism is not appropriate.

3. Ms. Rodriguez, do you believe impartiality is an aspiration or an expectation for a judge?

Response: I believe impartiality is an aspiration and an expectation for a judge. A judge must always aspire to be impartial and the parties who appear before a judge expect the judge to be impartial.

4. Ms. Rodriguez, should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?

Response: No.

5. Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?

Response: Faithful adherence to the rule of law provides certainty and consistency in our justice system. A judge's personal views about whether an outcome is desirable are irrelevant. A judge is sworn to follow the law and not her personal views.

6. Ms. Rodriguez, should a judge interject his or her own politics or policy preferences when interpreting and applying the law?

Response: No.

7. Throughout the past decade, the Supreme Court has repeatedly waded into the area of patent eligibility, producing a series of opinions in cases that have only muddled the standards for what is patent eligible. The current state of eligibility jurisprudence is in abysmal shambles. What are your thoughts on the Supreme Court's patent eligibility jurisprudence? Do you believe the current jurisprudence provides the clarity and consistency needed to incentivize innovation? How would you apply the Supreme Court's ineligibility tests—laws of nature, natural phenomena, and abstract ideas—to cases before you?

Response: Carefully. The Supreme Court set forth the test for patent eligibility in *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014). If confirmed, I would carefully review the claims of the patent before me and apply binding precedent from the U.S. Supreme Court and relevant circuit courts to evaluate the eligibility of the patent claims.

8. Ms. Rodriguez, if you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

Response: The First Amendment protects Americans' right to practice their religion freely. If confirmed, I will follow the rule of law in order to safeguard all of the liberties that are protected by our Constitution.

9. Ms. Rodriguez, is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

Response: The First Amendment protects the freedom of speech, including the freedom to peacefully protest. However, the First Amendment does not protect all speech. *See e.g. Chaplinsky v. State of New Hampshire*, 315 U.S. 568, (1942). If confirmed, I would have to carefully review the facts of the particular case and apply applicable Tenth Circuit and Supreme Court precedent to those facts to

determine whether any activity falls within the protection of the First Amendment.

10. Ms. Rodriguez, how would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits? Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: In order to evaluate an alleged violation of a constitutional right, I would first identify the underlying right. I would then look to applicable Supreme Court and Tenth Circuit precedent to determine the scope of the right and the appropriate standard of review for analyzing the alleged constitutional violation. Finally, I would apply Supreme Court and Tenth Circuit precedent to the specific facts at issue in the case.

11. Ms. Rodriguez, what will you do if you are confirmed to ensure that Americans feel confident that their Second Amendment rights are protected?

Response: The Second Amendment confers, "an individual right to keep and bear arms." *District Court v. Heller*, 554 U.S. 570, 595 (2008). In *McDonald v. City of Chicago*, 561 U.S. 742 (2010) this right was identified as a fundamental right that applies to the states pursuant the Fourteenth Amendment. If confirmed, I will follow the rule of law in order to protect all of the liberties that are protected by our Constitution.

12. What process do you follow when considering qualified immunity cases, and under the law, when must the court grant qualified immunity to law enforcement personnel and departments?

Response: Qualified immunity provides government officials immunity from suit for their actions in certain circumstances. In considering whether qualified immunity is appropriate in a particular case, I would consider whether the defendant was acting as a government official performing a discretionary function. I would then consider whether the specific act(s) taken by the official met the “good faith” and “objectively reasonable” test set forth in *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982). Supreme Court precedent makes clear that “qualified immunity attaches when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019) (quoting *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018)).

13. Do you believe that qualified immunity jurisprudence provides sufficient protection for law enforcement officers who must make split-second decisions when protecting public safety?

Response: There is a robust body of jurisprudence in the Tenth Circuit and Supreme Court regarding qualified immunity and I would follow this precedent.

14. What do you believe should be the proper scope of qualified immunity protections for law enforcement?

Response: This is an issue which is under review by state and federal agencies and legislatures. I would leave the policy determinations to the legislative and executive branches.

15. Do you agree with the current state of the *Chevron* deference doctrine? Or do you believe there should be either more or less deference given to agencies?

Response: *Chevron* is Supreme Court precedent. If I am confirmed, I would be duty-bound to follow this precedent.

16. How have your views on agency deference developed during your time as a district judge?

Response: I have not yet had the honor of serving as a district judge and therefore I cannot answer this question.