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## Confirm Judge Irma Carrillo Ramirez to the Fifth Circuit

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## CONFIRM JUDGE IRMA CARRILLO RAMIREZ TO THE FIFTH CIRCUIT

*Carl Tobias\**

The United States Senate must promptly appoint United States District Court for the Northern District of Texas Magistrate Judge Irma Carrillo Ramirez, who has diligently earned approval to the United States Court of Appeals for the Fifth Circuit and would become the tribunal's first Latina jurist. This appellate court efficaciously decides a huge number of appeals, includes a substantial judicial cohort, and clearly enjoys a reputation as the most conservative appeals court throughout the entire appellate system. The nominee, whom President Joe Biden tapped in spring 2023, deftly offers remarkable gender, experiential, ideological, and ethnic court diversity and has served dutifully in Magistrate Judge and Assistant United States Attorney (AUSA) roles for the Northern District of Texas over more than a quarter century.<sup>1</sup> Ramirez has excelled in law's higher echelons across three decades.<sup>2</sup> The position that the jurist would fill has now

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1. See Press Release, White House, President Biden Names Thirty-Second Round of Judicial Nominees (Apr. 14, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/14/president-biden-names-thirty-second-round-of-judicial-nominees/> [<https://perma.cc/WDG5-CBWZ>]; Todd Gillman, *Dallas Judge Who'd be First Latina on 5th Circuit Appeals Court OK'd by Cornyn and Cruz*, DALLAS NEWS (Apr. 14, 2023, 9:45 AM), <https://www.dallasnews.com/news/politics/2023/04/14/dallas-magistrate-picked-by-biden-for-appeals-court-would-be-first-latina-on-5th-circuit/> [<https://perma.cc/84FV-9ZZK>].

2. See sources cited *supra* note 1 (recounting Ramirez's excellent qualifications).

been vacant for practically fourteen months.<sup>3</sup> Accordingly, the upper chamber should rapidly appoint the well-qualified, centrist aspirant.

The appellate court opening arose in January 2022, when Fifth Circuit Judge Gregg Costa notified President Biden that he would definitely resign that August,<sup>4</sup> following numerous years of dedicated public service as a federal appellate and district court jurist.<sup>5</sup> The President's White House Counsel employed systematic procedures to recommend able, moderate candidates for Biden's scrutiny.<sup>6</sup> The nomination team assembled very capable, dynamic, mainstream prospects whom they had analyzed for this vacancy by consulting assiduously Texas Grand Old Party (GOP) Senators John Cornyn and Ted Cruz.<sup>7</sup> In a press statement, Senator Cornyn astutely proclaimed that nominee "Ramirez's distinguished track record. . . makes her exceptionally qualified for the Fifth Circuit," and Senator Cruz declared that the magistrate judge "had a 20-year record on the bench."<sup>8</sup>

Ramirez's nomination and confirmation processes have also moved comparatively smoothly thus far, in part because the nominee masterfully negotiated similar avenues earlier when the district court's active jurists carefully appointed her to serve as a magistrate judge in 2002, plus twice reappointed the designee.<sup>9</sup> Moreover, she had received a district court nomination that President Barack Obama marshaled<sup>10</sup> and a favorable 2016

3. See *Current Judicial Vacancies*, U.S. CTS., <https://www.uscourts.gov/judges-judgeships/judicial-vacancies/current-judicial-vacancies> [<https://perma.cc/5PLF-R8CT>] (Oct. 10, 2023).

4. *Id.*; Avalon Zoppo, *5th Circuit Judge Gregg Costa to Resign, Creating Second Vacancy for Biden*, LAW.COM (Jan. 13, 2022, 1:56 PM), <https://www.law.com/nationallawjournal/2022/01/13/5th-circuit-judge-gregg-costa-to-resign-creating-second-vacancy-for-biden/> [<https://perma.cc/W4CU-RT2W>].

5. See Madison Alder, *Resigning Fifth Circuit Judge Fears Politicization of Judiciary*, BLOOMBERG L. (Apr. 27, 2022, 3:45 AM), <https://news.bloomberglaw.com/us-law-week/resigning-fifth-circuit-judge-fears-politicization-of-judiciary> [<https://perma.cc/T5NK-XCFQ>]; Nate Raymond, *Fifth Circuit's Costa to Resign, Giving Biden Second Vacancy to Fill*, REUTERS (Jan. 13, 2022, 11:12 AM), <https://www.reuters.com/legal/litigation/5th-circuits-costa-resign-giving-biden-second-vacancy-fill-2022-01-13/> [<https://perma.cc/L3WZ-TPL6>].

6. See Carl Tobias, *How Biden Could Keep Filling the Federal Circuit Court Vacancies*, 80 WASH. & LEE L. REV. ONLINE 1, 9–10 (2022) (describing the process that President Biden deploys to select most circuit nominees).

7. See Press Release, Sen. John Cornyn, Cornyn, Cruz on Nomination of Irma Carrillo Ramirez for U.S. Fifth Circuit Court (Apr. 14, 2023), <https://www.cornyn.senate.gov/news/cornyn-cruz-on-nomination-of-irma-carrillo-ramirez-for-u-s-fifth-circuit-court/> [<https://perma.cc/W7H9-9855>].

8. *Id.*

9. See 28 U.S.C. § 631(a), (e) (2012) (documenting that a majority of district jurists in active service appoint magistrate judges to renewable eight-year terms); Gillman, *supra* note 1. In 2013, Northern District of Texas Judge Sam Lindsay stated about Ramirez: "If she writes an opinion, I know I can trust her" and expressly remarked that her magistrate judge reappointment reflects confidence in her. Gillman, *supra* note 1.

10. Press Release, White House, Off. of the Press Sec'y, President Obama Nominates Six to Serve on United States District Courts (Mar. 15, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/03/15/president-obama-nominates-six-serve-united-states-district-courts> [<https://perma.cc/XE4B-7FQX>]; see also Kevin Krause, *Former Dallas Judge Among Obama's Nominees for Federal Bench*, DALLAS NEWS (Mar. 16, 2016, 4:09 PM), <https://www.dallasnews.com/news/2016/03/16/former-dallas-judge-among-obama-s-nominees-for-federal-bench/> [<https://perma.cc/8UJ6-75NY>].

Senate Judiciary Committee hearing.<sup>11</sup> However, Ramirez's promising 2016 nomination to the Northern District of Texas expired at the legislative session's conclusion.<sup>12</sup> Indeed, ample elevation of lower federal court jurists to higher tribunals is an effective mechanism on which virtually all contemporary presidential administrations now depend.<sup>13</sup> President Biden's White House personnel speedily canvassed and proffered a few superb, moderate choices, notably including Ramirez.<sup>14</sup>

When President Biden proposed Ramirez, he diligently surveyed the pick's many impressive qualifications.<sup>15</sup> Since 2002, the nominee has been a magistrate judge in Texas's Northern District, whose jurists are responsible for mammoth lawsuits that constitute almost double the countrywide average.<sup>16</sup> From 1995 until 2002, Ramirez was a very competent Assistant United States Attorney, who actively pursued massive district criminal and civil actions.<sup>17</sup> From 1991 until 1995, she was a highly capable associate at the prestigious firm now known as Locke Lord.<sup>18</sup>

Her thorough record demonstrates that Ramirez is an industrious, ethical, intelligent, robust, cautious, and diverse candidate vis-à-vis ethnicity, ideology, experience, and gender, who musters a balanced temperament.<sup>19</sup> The nominee captured a well-qualified rating from the American Bar Association Standing Committee on the Federal Judiciary.<sup>20</sup> Ramirez pragmatically displayed those

11. *Nominations: Hearing Before the S. Comm. on the Judiciary*, 114th Cong. (Sept. 7, 2016), <https://www.judiciary.senate.gov/committee-activity/hearings/08/31/2016/nominations-09-07-16> [<https://perma.cc/GFN9-96M8>] [hereinafter *September 7th Hearing*].

12. Matthew Choi, *Biden to Nominate Texas Judge to be First Latina on Federal Appeals Court*, TEXAS TRIBUNE (Apr. 14, 2023), <https://www.texastribune.org/2023/04/14/irma-ramirez-judge-nomination-5th-circuit/> [<https://perma.cc/9VNE-J29T>]; see also 162 CONG. REC. S7183 (daily ed. Jan. 3, 2017) (documenting the expiration of Ramirez's nomination).

13. See Elisha Savchak et al., *Taking It to the Next Level: The Elevation of District Court Judges to U.S. Courts of Appeals*, 50 AM. J. POL. SCI. 478, 479 (2006).

14. Compare Raymond, *supra* note 5 (indicating that Judge Costa gave his notice of judicial vacancy to President Biden in early January of 2022); with Press Release, White House, *supra* note 1 (announcing selection of Ramirez for Fifth Circuit appointment).

15. See sources cited *supra* note 1; see also Press Release, Sen. John Cornyn, *supra* note 7. See generally *Nominations: Hearing Before the S. Comm. on the Judiciary*, 118th Cong. (May 17, 2023), <https://www.judiciary.senate.gov/committee-activity/hearings/05/17/2023/nominations> [<https://perma.cc/TB42-3NC5>] [hereinafter *May 17th Hearing*].

16. *U.S. District Courts – Combined Civil and Criminal Federal Court Management Statistics (June 30, 2023)*, U.S. CTS. (2023), <https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2023/06/30-3> [<https://perma.cc/YS9N-H82C>] (providing data on caseloads for each U.S. district court); see *May 17th Hearing*, *supra* note 15 (highlighting Ramirez's professional resolution of thousands of cases); see also JUD. CONF. OF THE U.S., REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 24 (Mar. 14, 2023), <https://www.uscourts.gov/about-federal-courts/reports-proceedings-judicial-conference-us> [<https://perma.cc/ANC8-MFKR>] (documenting the federal court policymaking arm recommendation, which is premised on conservative approximations of case and workloads, that Congress authorize one additional Northern District of Texas judgeship).

17. See Press Release, White House, *supra* note 1.

18. See *id.* Ramirez earned a "J.D. from Southern Methodist University School of Law in 1991 and a B.A. from West Texas State University in 1986." *Id.*

19. See sources cited *supra* note 1; see also sources cited *infra* notes 20, 30.

20. STANDING COMM. ON FED. JUDICIARY, AM. BAR. ASS'N, RATINGS OF ARTICLE III AND ARTICLE IV JUDICIAL NOMINEES 118TH CONG. (2023), [https://www.americanbar.org/content/dam/aba/administrative/government\\_affairs\\_office/webra](https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/webra)

attributes in a recent Senate Judiciary Committee hearing on her Fifth Circuit nomination.<sup>21</sup>

At this hearing, the Texas Senators effusively introduced Ramirez.<sup>22</sup> Senator Cornyn's opening of the session echoed his effusive 2016 hearing introduction by pointing to "numerous awards" Judge Ramirez has earned and the many cases that she has handled.<sup>23</sup> The politician distinctly voiced abundant confidence that Ramirez would astutely "bring the same passion, commitment and fidelity to the law that we've seen throughout her career."<sup>24</sup> Judge Ramirez faced virtually no difficult questions from GOP members, and she cogently answered the committee's questions while also telling her compelling life story.<sup>25</sup> A few GOP legislators who have insistently pressed dozens of Biden appeals court nominees also seemed particularly restrained. For example, "Senator John Kennedy, R-LA, [who] has become a land mine for judicial nominees. . . posed only a couple of queries to Ramirez about the importance of a justice system blind to race, which she easily handled."<sup>26</sup> Democratic members—prominently Senator Richard Durbin (IL), the Judiciary Committee Chair—appeared pleased with her comprehensive answers.<sup>27</sup>

Democrats posited questions about Ramirez's innovative development of a re-entry system to help "first-time, low-level offenders;" the jurist "said that the program has taught her about the power of redemption" and substantially enhanced her appreciation for the desperate straits confronted by individuals

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ngchart-118.pdf [https://perma.cc/7K4F-8MPA] (well qualified is the best rating available); *see also* STANDING COMM. ON FED. JUDICIARY, AM. BAR. ASS'N, RATINGS OF ARTICLE III AND ARTICLE IV JUDICIAL NOMINEES 114TH CONG. (2016), [https://www.americanbar.org/content/dam/aba/administrative/government\\_affairs\\_office/web-rating-chart-114.pdf](https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/web-rating-chart-114.pdf) [https://perma.cc/K8D3-V2M8] (the ABA assigned Ramirez a well-qualified rating when President Obama previously nominated the very experienced Magistrate Judge to the United States District Court, Northern District of Texas).

21. *See May 17th Hearing, supra* note 15.

22. *See May 17th Hearing, supra* note 15 (statements of Sens. Cornyn and Cruz).

23. *May 17th Hearing, supra* note 15; *see September 7 Hearing, supra* note 11 (statements of Sens. Cornyn and Cruz). Senator Cornyn emphasized that Judge Ramirez's distinguished track record of judicial excellence throughout her decades of service in Texas makes her "exceptionally qualified." *May 17th Hearing, supra* note 15. Texas's senators lauded its Federal Judicial Evaluation Committee that vetted applicants and rated Judge Ramirez the best. *Id.*

24. *Id.* Judge Ramirez's "work has served as a model around the country." *Id.*; *see* Brad Kutner, *Fifth and Ninth Circuit Nominees Elicit Varied Responses at Senate Judiciary Hearing*, LAW.COM (May 17, 2023, 2:14 PM), <https://www.law.com/nationallawjournal/2023/05/17/fifth-and-ninth-circuit-nominees-elicited-varied-responses-at-senate-judiciary-hearing/> [https://perma.cc/HU9Z-RE27] (providing additional analysis of the hearing).

25. *See May 17th Hearing, supra* note 15; *see also* Jordan Rudner, *5 Texas Judge Nominees Have Broad Support but Won't be Confirmed Anytime Soon*, DALLAS NEWS (Sept. 7, 2016, 6:07 PM), <https://www.dallasnews.com/news/courts/2016/09/07/5-texas-judge-nominees-have-broad-support-but-won-t-be-confirmed-anytime-soon/> [https://perma.cc/ZSD5-AXGK]. Ramirez testified that her father immigrated from Mexico in the "Bracero" program. *See generally May 17th Hearing, supra* note 15.

26. Joseph Morton, *From West Texas Cotton Fields to the 5th Circuit: Dallas Judge Poised to Make History*, DALLAS NEWS (May 17, 2023, 4:01 PM), <https://www.dallasnews.com/news/politics/2023/05/17/from-west-texas-cotton-fields-to-the-5th-circuit-dallas-judge-poised-to-make-history/> [https://perma.cc/DH9T-PQJT].

27. *See May 17th Hearing, supra* note 15.

released from jail who “truly want to do better and live” productively.<sup>28</sup> When quizzed regarding her perspectives on diversity, Ramirez explained that a bench which “represents the community” is one that “instills confidence in the judiciary” and “reaffirms the American dream” that a *Bracero*’s child may receive appointment to a Court of Appeals.<sup>29</sup>

On June 8, 2023, committee deliberation yielded a favorable ballot, probably because Ramirez is a very experienced centrist whom both Texas Republican legislators powerfully support, despite the rampant politicization which increasingly threatens confirmation of Biden nominees—most saliently, Eastern District of California Judge Ana de Alba, the remaining circuit nominee on the June hearing panel.<sup>30</sup> Many Democratic and Republican senators’ perspectives mirrored notions which they had espoused earlier in the session. For instance, Senator Cornyn repeated the glowing praise that he shared when introducing Ramirez.<sup>31</sup> By way of contrast, Senator Lindsey Graham (R-SC) assertively reiterated that Judge de Alba’s child pornography sentencing was routinely outside the mainstream.<sup>32</sup> Senator Durbin answered by characterizing Judge Ramirez and Judge de Alba as “excellent.”<sup>33</sup> In the end, the committee overwhelmingly approved nominee Ramirez with a voice vote<sup>34</sup> because she is a highly competent, moderate, and very experienced jurist, who has capably implemented judicial efficiency.

28. *Id.* (quoting statements made by Judge Ramirez during the Senate Judiciary Committee nomination hearing).

29. *Id.*

30. *Executive Business Meeting: Hearing Before the S. Comm. on the Judiciary*, 118th Cong. (June 8, 2023), <https://www.judiciary.senate.gov/committee-activity/hearings/06/08/2023/executive-business-meeting> [https://perma.cc/NBF2-A3QR] [hereinafter *June 8th Hearing*] (approving Judge Ramirez and repeating GOP hearing criticism of Judge de Alba’s rulings and child pornography sentences); see *May 17th Hearing*, *supra* note 15; see also Ben Wermund, *Texan from Tiny Tokio is a Vote Away from Being the First Latina Judge on U.S. Appeals Court*, HOUS. CHRON. (June 8, 2023), <https://www.houstonchronicle.com/politics/texas/article/texan-one-vote-away-first-latina-u-s-appeals-18141862.php> [https://perma.cc/Y9AH-2SVB].

31. Morton, *supra* note 26; see sources cited *supra* note 30.

32. *May 17th Hearing*, *supra* note 15 (Ranking Member Graham’s reiterating hearing contentions by Sens. Cruz, Marsha Blackburn (R-TN), and Mike Lee (R-UT)). For tie votes and dynamics similar to Judge de Alba’s in meetings on Sixth and First Circuit nominees Rachel Bloomekatz and Julie Rikelman, see *Executive Business Meeting: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Aug. 4, 2022), <https://www.judiciary.senate.gov/committee-activity/hearings/08/04/2022/executive-business-meeting> [https://perma.cc/2N5G-WLT6]; *Executive Business Meeting: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Dec. 1, 2022), <https://www.judiciary.senate.gov/committee-activity/hearings/12/01/2022/executive-business-meeting> [https://perma.cc/58VT-PP2V]. For issues raised concerning the confirmation of Judge de Alba, see Morton, *supra* note 26. See also *May 17th Hearing*, *supra* note 15.

33. *May 17th Hearing*, *supra* note 15. Chair Durbin asserted that the federal sentencing guidelines explicitly grant Judge de Alba discretion. *Id.*; see U.S. SENT’G GUIDELINES MANUAL §1A1.1(b) (U.S. SENT’G COMM’N 2004); see generally *U.S. v. Booker*, 543 U.S. 220, 245–46 (2005).

34. *June 8th Hearing*, *supra* note 30. A voice vote signals that committee members’ support for a nominee is so strong that a roll call vote is unnecessary. See *id.* Judge de Alba’s vote was 11–10. *Results of Executive Business Meeting*, S. COMM. ON JUDICIARY (June 8, 2023), <https://www.judiciary.senate.gov/imo/media/doc/2023-06-08%20-%20EBM%20-%20Results.pdf> [https://perma.cc/GX97-3YFA].

A few ideas elucidate why the chamber must immediately appoint the nominee. First, Judge Costa's appeals court post has been open for nearly fourteen months. Second, President Biden named Ramirez in April and requiring exceptional candidates and nominees to wait lengthy periods unfairly places these individuals' lives and careers on hold. This might be significant to nominee Ramirez, as she presently discharges ample responsibilities as Magistrate Judge. The vacant slot also requires senior plus active judicial colleagues to decide abundant cases, yet plentiful other jurists are now responsible for considerably fewer appeals.<sup>35</sup> These Fifth Circuit members have ably continued treating and disposing of voluminous cases, which allows the tribunal to keep swiftly, economically, and fairly resolving a huge docket.<sup>36</sup> Although many litigants and counsel appreciate the Fifth Circuit's efforts, the prolonged vacancy caused by politicized conflicts between Republican and Democratic senators may impose substantial detrimental effects on litigants who acutely need their lawsuits concluded quicker.

Now that the chamber has reconvened after the early October Recess, Senate Majority Leader Chuck Schumer (NY) must expeditiously schedule a rigorous Senate floor debate and confirmation vote, which appoints nominee Magistrate Judge Irma Carrillo Ramirez to the prolonged Fifth Circuit opening. Her distinguished record shows that the accomplished, mainstream, diverse nominee merits immediate confirmation and her capacious abilities will enable the Fifth Circuit to continue promptly, inexpensively, and fairly deciding its substantial number of appeals.

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35. See generally Marin K. Levy, *The Promise of Senior Judges*, 115 NW. U. L. REV. 1227 (2020) (explaining the role of senior judges of the courts of appeals); Xiao Wang, *The Old Hand Problem*, 107 MINN. L. REV. 971 (2023) (examining the potential political motivation judges may have for assuming senior status).

36. See FED. R. CIV. P. 1 (2022) (providing that the Federal Rules of Civil Procedure "should be construed, administered, and employed by the courts... to secure the just, speedy, and inexpensive determination of every action and proceeding"). See generally Patrick Johnston, *Problems in Raising Prayers to the Level of Rules: The Example of Federal Rule of Civil Procedure 1*, 75 B.U. L. REV. 1325 (1995) (critically analyzing the Rule 1 mandate that courts construe the rules to further judicial efficiency).