

From: [Wong, Candice \(CRM\)](#)
To: [Escalona, Prim F. \(OLA\)](#); [\(b\) \(6\)](#); [\(OLA\): \(b\) \(6\)](#); [\(OLA\)](#)
Cc: [Benczkowski, Brian \(CRM\)](#); [Miner, Matthew \(CRM\)](#); [Cronan, John \(CRM\)](#)
Subject: CRM Barr QFRs
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Attachments: [CRM Barr QFRs FINAL.docx](#)

Prim,

Attached are CRM's QFRs within the master doc. [\(b\) \(5\) Per CRM](#)

[\(b\) \(6\), \(b\) \(7\)\(C\) Per CRM](#) Let me know if you have any questions.

Thanks!

Candice

Candice C. Wong

Senior Counsel to the Assistant Attorney General, Criminal Division

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QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR GRASSLEY

1. At the hearing, I pointed out my concerns about concentration and consolidation in the health care industry and my concerns about the high cost of drugs. I have written and expressed my concerns to the Department of Justice (DOJ) Antitrust Division about certain mergers, and have raised concerns with DOJ and the Federal Trade Commission (FTC) about certain practices in the health care and pharmaceutical industries that I have heard could be anti-competitive.

- a. If confirmed, will you make sure that the Antitrust Division carefully scrutinizes transactions and mergers in the health care and pharmaceutical industries? Will you make sure that the Antitrust Division looks into anti-competitive and abusive practices in these sectors that reduce choice and keep costs high for consumers?

RESPONSE: (b) (5)

- b. If confirmed, will you commit to ensuring that health care and prescription drug antitrust issues are a top priority for the DOJ?

RESPONSE: (b) (5)

- c. If confirmed, will you commit to collaborating with the FTC in their efforts in this area?

RESPONSE: (b) (5)

2. As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector. I believe that the Antitrust Division needs to dedicate more time and resources to agriculture competition issues. DOJ must play a key role in limiting monopsonistic and monopolistic behavior in agriculture.

- a. If confirmed, can you assure me that agriculture antitrust issues will be a priority for DOJ?

RESPONSE: (b) (5)

3. During consideration of the Hatch-Goodlatte Music Modernization Act (MMA), several colleagues and I inquired about the DOJ Antitrust Division's Judgement Termination Program, specifically as it relates to the consent decrees governing ASCAP and BMI, the two largest performing rights organizations. Because of concerns about the impact that a potential termination of these decrees would have on music industry stakeholders, DOJ assured us that there would be a process of timely consultation and substantial stakeholder input under which these consent decrees would be considered prior to any possible termination. The MMA also provides for congressional consultation and oversight of any DOJ action regarding these consent decrees.

- a. If confirmed, can you ensure that DOJ will provide this Committee with ongoing updates and meaningful advanced notice regarding any proposed modification or termination of the ASCAP and BMI consent decrees?

RESPONSE: (b) (5)

- b. If confirmed, will you commit to working closely with this Committee if DOJ decides to modify or terminate these consent decrees so that Congress can take any necessary legislative action prior to modification or termination of the decrees?

RESPONSE: (b) (5)

4. The *First Step Act* requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will lead to more inmates being put in prerelease custody, such as residential reentry centers (RRCs). That means we have to make sure that RRCs are appropriately funded.

- a. Will you commit to making sure that there is enough space in RRCs to meeting the needs of prisoners who qualify through earned and good time credits for prerelease custody?

RESPONSE: (b) (5)

5. The *First Step Act* requires the Bureau of Prisons (BOP) to recalculate good behavior credits for all inmates. Previously, inmates could earn up to 47 days per year toward early release for good behavior. The new law allows BOP to apply 54 days per year. However, it now seems BOP plans to delay this recalculation for months which could impact thousands of inmates who should be released under the new law. I don't see any reason to keep people in prison when the law clearly states they should be released.

- a. In your opinion, what are the justifications for delaying this recalculation and would you foresee any issues if Congress made this good time credit recalculation effective immediately?

RESPONSE:

(b) (5) Per CRM

6. Since 2007, DOJ has used the Justice Reinvestment Initiative to support states that want to take a fresh look at their sentencing and corrections systems in order to improve the public safety return-on-investment on each taxpayer dollar. The Department has supported these states as they implement policies to reinvest savings from reduced correctional populations into evidence-based programs that reduce recidivism, helping states to both cut costs and crime at the same time.
- a. Do you support the Justice Reinvestment Initiative and do you anticipate any modifications in its administration?

RESPONSE: (b) (5)

7. Over the years, Congress has appropriated billions of dollars to be used for DOJ grants. These grants are then awarded by DOJ to fund state, local, and tribal governments and nonprofit organizations for a variety of important criminal justice-related purposes. However, at times there have been reports of duplicative grant programs, as well as fraud and abuse.
- a. If confirmed, will you commit to working with this committee to remove these duplicative programs as well as root out waste, fraud, and abuse in DOJ grant programs?

RESPONSE: (b) (5)

8. Illegal drug traffickers and importers can currently circumvent the existing scheduling regime established in the Controlled Substances Act by altering substances in a lab, which thereby creates a drug that is legal but often dangerous. Under the Controlled Substances Act, an eight-factor analysis of a substance must be conducted to determine potential abuse and accepted medical use. Unfortunately, this is a time-consuming process. With the onslaught of dangerous synthetic drugs continuing to affect thousands of Americans, we must be more proactive and efficient in identifying and prosecuting cases with these substances.
- a. What do you see as an effective way to address the increasing number of synthetic analogues that enter our country?

RESPONSE: (b) (5)

- b. How can a balance be struck between analyzing drugs for medical use while protecting Americans from these substances' potential dangers and holding drug traffickers responsible for distributing synthetic drugs?

RESPONSE: (b) (5)

9. For nearly fifty years, the University of Mississippi has had the sole contract with the National Institute on Drug Abuse (NIDA) to grow cannabis for research purposes. To expand the number of manufacturers, the Drug Enforcement Administration (DEA) submitted a notice in the Federal Register on August 11, 2016, soliciting applications for licenses to manufacture marijuana for research purposes. However, over two years have passed without any new schedule I marijuana manufacturer registrations. Your predecessor, Attorney General Sessions, testified on April 25, 2018 at the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, stating that "[w]e are moving forward and we will add, fairly soon . . . additional suppliers of marijuana under the Controlled [Substances Act]." On July 25, 2018, I sent a letter with other Senators to Attorney General Sessions asking for an update on marijuana manufacturer applications.
 - a. Will you review this letter and assess the status of the pending marijuana manufacturer applications?

RESPONSE: (b) (5)

- b. Do you intend to support the expansion of marijuana manufacturers for scientific research?

RESPONSE: (b) (5)

10. Along with Senator Feinstein, I introduced legislation that expands research into a derivative of marijuana known as cannabidiol, or CBD. The Food and Drug Administration (FDA) recently approved Epidiolex, whose main active ingredient is CBD. This FDA-approved drug has since been placed in Schedule V of the Controlled Substances Act. While this is a positive step and will provide a new treatment option for those with two types of intractable epilepsy, it is my understanding that this scheduling action relates only to CBD in an FDA-approved formulation. Senator Feinstein and I wrote to DOJ and Health and Human Services (HHS) on two occasions requesting that a scientific and medical evaluation of CBD be conducted. The first letter was sent on May 13, 2015, and the second letter was sent on November 18, 2018. Both DOJ and HHS agreed to conduct a medical and scientific evaluation of CBD independent of marijuana in 2015.
 - a. What is the status of this request?

RESPONSE: (b) (5)

- b. What is the anticipated date of completion?

RESPONSE: (b) (5)

- c. Do you view the substance CBD as in Epidiolex as a separate substance from CBD in marijuana?

RESPONSE: (b) (5)

- d. Do you believe that marijuana-derived CBD is separate and distinct from hemp-derived CBD?

RESPONSE: (b) (5)

11. Today's global economy facilitates commerce and a strong American financial system. However, most money within global transactions flows through U.S. banks, which unfortunately makes our financial institutions prone to exploitation by terrorists, drug kingpins, and human traffickers who need to fund their operations. Congress has made efforts to strengthen our laws and make it more difficult for terrorists to move money. However, it has been almost 15 years since Congress took action and updated anti-money laundering laws.

- a. What do you see as the biggest challenges for DOJ in combatting money laundering in our current age of digital currency, global economies, and terrorist financing?

RESPONSE: (b) (5) Per CRM

[REDACTED]

- b. What additional tools do you believe would be helpful in addressing money laundering?

RESPONSE: (b) (5) Per CRM

- c. My bill, the *Combating Money Laundering, Terrorist Financing, and Counterfeiting Act*, seeks to improve our nation's anti-money laundering laws. If confirmed, will you commit to working with me to pass meaningful legislation to address money laundering?

RESPONSE: (b) (5) Per CRM

12. China recently stated that it plans to place all fentanyl-like substances on Schedule I in China. This could dramatically decrease the amount of fentanyl and its analogues that flow into the United States.

- a. What can you do in your role as Attorney General to ensure that China executes its promise to place these drugs in Schedule I?

RESPONSE: (b) (5)

- b. What can we do within our own borders to hold China accountable? Do you have any legislative recommendations?

RESPONSE: (b) (5)

13. DOJ is the administrator of immigration laws and the Attorney General has statutory authority to implement and execute these laws, including asylum claims. Over the past few years, we've seen the number of asylum claims filed increase drastically. As many as 80% of these claims are eventually denied as having no legal merit. At the same time, DOJ recently reported that the total asylum backlog exceeds 700,000 cases. 8 U.S. Code Section 1158 clearly states that grants of asylum should only be extended to those applicants who can show that their home country government persecuted them on the base of race, religion, nationality, membership in a particular social group, or political opinion. Last year, then-Attorney General Sessions took up the case of *Matter of A-B*, which restored asylum adjudications to original congressional intent, reversing an Obama-era decision to expand grounds of asylum without Congressional approval.

- a. What is your position for defining the threshold for an initial positive finding of credible fear and the grant of asylum?

RESPONSE: (b) (5)

- b. What are the implications for legitimate asylum seekers when our asylum backlog is in this dire state?

RESPONSE: (b) (5)

- c. If confirmed, will you commit to working with Congress to achieve meaningful bipartisan asylum reform?

RESPONSE: (b) (5)

14. Previous administrations have refused to prosecute many previously deported aliens who illegally re-entered the United States. If confirmed, will you prioritize felony illegal re-entry cases?

RESPONSE: (b) (5)

15. There's an ongoing debate about the legality of so-called "sanctuary jurisdictions." Can DOJ and federal law enforcement effectively do their jobs when states and cities across the country refuse to comply with the law?

RESPONSE: (b) (5)

16. Will you commit to enforcing immigration detainer statutes and regulations, and will you use all available tools at your disposal to encourage compliance?

RESPONSE: (b) (5)

17. In 2018, DOJ announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it's the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it's important that the Department continue its investigative and oversight work.

- a. If confirmed, will you ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?

RESPONSE: (b) (5)

18. Current DOJ regulations give the Attorney General the discretion to release certain reports to the public concerning the work of a Special Counsel. If confirmed, will you commit to erring on the side of transparency in releasing information that's in the public interest?

RESPONSE: (b) (5)

19. In February 2018, then-Associate Attorney General Rachel Brand announced that DOJ would begin reviewing the fairness of class action settlements, pursuant to the Attorney General's authority under the Class Action Fairness Act of 2005 (CAFA)—a bill on which I was the lead sponsor. Congress passed CAFA with bipartisan support to push back against certain abuses in the class action system, particularly where lawyers were cashing in at the expense of class members. I was pleased to hear that DOJ began exercising its review authority under CAFA last year by filing statements of interest where certain proposed settlements appeared unfair to class members.

- a. If confirmed, will you ensure DOJ continues this work in protecting class members from unfair settlements?

RESPONSE: (b) (5)

20. Every day, the Americans with Disabilities Act (ADA) protects countless individuals with disabilities, ensuring physical access to “any place of public accommodation.” For this critically important law to be effective, however, it must be clear so that law abiding Americans can faithfully follow the law. Currently, there is confusion over whether the ADA applies to websites, and if so, what standards should be used to determine website compliance. This lack of clarity benefits only the trial lawyers, and does nothing to advance the cause of accessibility.

- a. If confirmed, will you commit to promptly take all necessary and appropriate actions—including filing statements of interest in pending litigation—to help resolve the current uncertainty?

RESPONSE: (b) (5)

- b. More broadly, what other steps will you recommend DOJ take under your leadership to combat abusive litigation practices under the ADA?

RESPONSE: (b) (5)

21. In 2010, I authored a change to the False Claims Act that prevents the dismissal of a qui tam action if the government is in opposition to such dismissal and if the action is based on information that may have been publicly disclosed. The purpose of 31 U.S.C. 3730(e)(4) is to allow the federal government to maximize recoveries for taxpayers by using qui tam relators as a source of information regarding fraud about which the government may not be fully aware. Will you commit to use this provision to prevent unnecessary dismissals of meritorious qui tam cases, especially those where the affected agency supports the continuation of the litigation?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR CORNYN

1. In your testimony, you discussed "red flag laws" and the concept of Extreme Risk Protection Orders (ERPOs) as a possible means of keeping firearms out of the hands of dangerously mentally-ill individuals. Of course that is a goal we all share. As I'm sure you are aware, several states have enacted ERPO laws to date; however, these laws have included varying levels of due process protections, some of which have been subject to abuse. As a result, this issue has become a cause of concern for many law-abiding gun owners. Would you agree that at a minimum, state ERPO laws should include robust front-end due process protections, penalties against the filing of frivolous charges, and mental health treatment for those who pose a significant danger to themselves or others?

RESPONSE: Yes, I agree that any laws that temporarily restrict possession of firearms by law-abiding persons must conform to Constitutional standards - including those embodied in the Second, Fifth and Fourteenth Amendments. To the extent that these laws also incorporate features that minimize the likelihood of their abuse, I support that approach as well.

2. In your testimony, you stated that you have opposed bans on certain semi-automatic firearms (often misnamed as "assault weapons"). You also stated your long standing belief that the Second Amendment guarantees the fundamental, individual right to keep and bear arms for all law-abiding Americans - a belief that predates the Supreme Court's Heller and McDonald decisions. You also mentioned that, in looking at firearms regulations, it is appropriate to consider whether the burden on law-abiding individuals is proportionate to any general benefit to public safety. Would you further clarify that last statement, in light of Justice Scalia's holding in Heller, that the enumeration of the Second Amendment right "takes out of the hands of government the power to decide whether the right is really worth insisting upon"?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR TILLIS

1. It is increasingly clear that technology provides very useful tools in crime fighting and crime prevention, especially when they are in an integrated system. I would like to see Federal support for the deployment of these technologies increased. Most gunshot incidents, for example, go unreported to the police. Gunfire detection and location technology, where it has been deployed, and that includes some communities in my state, has helped police respond to more gunshot incidents, and in a safer and timely way. This enables police to collect the shell casings, interview witnesses, and occasionally catch a fleeing suspect. When those shell casings are run through another technology, the National Integrated Ballistic Identification System – NIBIN – law enforcement agencies can determine if the gun has been used in other crimes and can focus their investigation. The use of cameras in public spaces is another positive tool. Will you support increased Federal support to assist localities to deploy these kinds of technologies?

RESPONSE: (b) (5)

2. Access to digital evidence has grown increasingly important in investigations and prosecutions of criminal cases at the local, state, and federal levels. Investigators increasingly obtain data from mobile communications devices, social media accounts, internet browsing histories, and myriad other data sources to help them generate leads, identify suspects, and build their cases. Yet, as the Center for Strategic and International Studies (CSIS) recently reported, law enforcement agencies are facing significant challenges impeding their ability to effectively access digital evidence to support criminal investigations.

The CSIS report found that nearly one-third of law enforcement professionals cited difficulties in identifying which service providers had access to digital evidence as their largest challenge, followed by difficulties in obtaining evidence from providers, and a lack of resources needed to access and analyze data from devices.

- a. As Attorney General, what steps will you take to promote digital evidence training programs for federal, state and local law enforcement officers?

RESPONSE: (b) (5)

- b. Will you conduct a review of existing programs to promote digital evidence training and report back to this Committee on those efforts and any steps that can be taken to improve them?

RESPONSE: (b) (5)

3. I'm concerned that the Department of Justice—which has the legal authority to prosecute internet based platforms which promote prostitution and facilitate sex trafficking—rarely does so. While it is encouraging that DOJ finally cracked down on certain bad actors last year, these actions came years too late for many victims of sex-trafficking.

- a. What steps will you take to continue the Department's work to prosecute existing internet based platforms that promote prostitution and sex-trafficking?

RESPONSE: (b) (5) Per CRM

- b. What will you do as Attorney General to anticipate and crack down on emerging technologies used by sexual exploiters to engage in prostitution and human trafficking?

RESPONSE: (b) (5) Per CRM

- c. What protective measures can you take to increase federal, state and local law enforcement's understanding of emerging modalities of sexual exploitation?

RESPONSE: (b) (5) Per CRM

- d. How can the Department of Justice better coordinate and collaborate with social media companies to eradicate criminal exploitation that may be occurring on their platforms?

RESPONSE: (b) (5) Per CRM

(b) (5) Per CRM

4. For the last few decades the federal government has made a concerted effort to fight sex trafficking. We've taken steps to protect victims and help them escape sexual exploitation. We've also cracked down on sex traffickers, enhancing criminal penalties for sex trafficking and providing the Department with more tools and resources to prosecute them.

Unfortunately, one thing we haven't done well is focus on prosecuting those who solicit and purchase sex. In recognition of this, last year, Congress passed the Abolish Human Trafficking Act of 2017, which requires the Department to create a national strategy to reduce demand for human trafficking victims. The law also requires the Department to issue guidance urging Department components to prosecute those who purchase sex from minors and trafficking victims.

- a. Will you commit to finalizing and issuing the guidance required by the Abolish Human Trafficking Act of 2017?

RESPONSE: (b) (5) Per CRM

- b. How will you increase Department efforts to crack down on those who purchase sex commercially?

RESPONSE: (b) (5) Per CRM

- c. Will you direct DOJ's criminal division to provide technical and, to the extent allowed by law, financial support to state and local law enforcement efforts aimed at prosecuting commercial sex buyers?

RESPONSE: (b) (5) Per CRM

5. Every year, hundreds of American-citizen children are abducted to a foreign country by one of their parents. These children are usually taken from the parent who has custody by their ex-spouse. The federal government has several tools to combat international parental child abduction but as Senator Feinstein and I noted in a letter to Secretary Pompeo, we rarely if ever use all of these tools. One of the most underused tools is prosecution of the taking parent—and their accomplices—under the International Parental Kidnapping Crime Act. That law makes it a federal crime to remove an

American-citizen child from the United States with intent to obstruct custodial rights and individuals can face up to 3 years in prison for violations of its provisions.

According to conversations my office has had with victim-advocates, it appears the Department rarely prosecutes individuals under the IPKCA.

- a. As Attorney General, will you commit to prosecuting those who commit and assist in international parental child kidnapping to the fullest extent allowed by law?

RESPONSE: (b) (5) Per CRM

6. Another complaint victims have brought to my attention is the general lack of knowledge about this issue from federal, state and local law enforcement. Many law enforcement officers don't even realize a parental kidnapping is a crime. As Attorney General, what will you do to provide better training and information to federal, state and local law enforcement officers? Specifically, what can or will you do to teach our law enforcement officers about how the potential for prosecution under the IPKCA can be both a deterrent and remedy for international parental kidnapping?

RESPONSE: (b) (5) Per CRM

7. I'd like to commend President Trump and former Attorney General Jeff Sessions for their commitment to protecting the intellectual property rights of American innovators. Domestically and internationally intellectual property crime is on the rise. Intellectual property crime not only threatens our nation's economic health and well-being, but it also poses a national security risk. Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim (DEL RA HEEM) have made great strides in prosecuting intellectual property theft. If confirmed as Attorney General, what will you do to continue the efforts of General Sessions, Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim?

RESPONSE: (b) (5) Per CRM

8. As you know, certain countries have been more egregious in their theft of American intellectual property. China is perhaps the most notorious, but India, Brazil and Russia are also bad actors. How will you approach international intellectual property theft and

work with your foreign counterparts to preserve and protect the property rights of American innovators?

RESPONSE: (b) (5) Per CRM

[REDACTED]

9. Does the Department need additional tools, resources or legal authorities to better combat international IP crime?

RESPONSE: (b) (5) Per CRM

[REDACTED]

10. The BOP recently reported over 16,000 prisoners were on a wait-list for basic literacy programs. The First Step Act will provide some funding to support prison programming, but there is also a lot of room for greater partnership with volunteer faith-based and community-based groups that provide programming without government funding.

- a. How will you go about ensuring there is a focus on increasing the number and quality of programs available through partnerships with programs that do not take direct funding from the government?

RESPONSE: (b) (5)

- b. Will you encourage in-prison programs proven to reduce recidivism offered by faith-based organizations to be considered as a reentry program in addition to being offered through the chaplaincy? (Background: Currently, faith-based organizations are generally only considered for programming under the chaplaincy by the BOP. The chaplaincy has strict limits on the number of volunteers and hours provided by each faith tradition, even if the program is holistic, offering more than explicitly religious activities, open to prisoners of any faith, and does not take any government funding. The First Step Act states that the AG shall inform the BOP that faith-based programs proven to reduce recidivism shall qualify as a reentry program outside the chaplaincy).

RESPONSE: (b) (5)

11. The Second Chance Act provided that, "any person who provides mentoring services to an incarcerated offender is permitted to continue such services after that offender is released from prison." The First STEP Act expands that provision stating that a prisoner in prerelease custody may not be prohibited from receiving mentoring, reentry or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated. "Reentry or spiritual services" was inserted because many people leaving prison without much family support have worked closely with chapel and other faith-based volunteer mentors. These volunteers are in a place to encourage them through the difficult reentry process.

But BOP policies currently only allow specially trained mentors to remain in contact with parishioners after they release. Will you shepherd the implementation of this part of this new law, ensuring that the chapel and other faith-based volunteers are able to play a critical role in the reentry process of the men and women they have come to know and care about?

RESPONSE: (b) (5)

12. Director: The federal prison system has been without a permanent director since May of last year. The Attorney General is responsible for hiring this non-political position. Given the mandates on the federal prison system obligated under the newly passed First Step Act, how would you prioritize the hiring for this position and what qualities would you look for in a candidate?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR CRAPO

Operation Choke Point was an Obama-era initiative that targeted “high risk” industries and prevented them from fully participating in the economy. Employees of the DOJ coordinated with federal bank examiners to press financial institutions who provided financial services to certain targeted industries (including firearms and ammunition) to end these relationships. This program effectively operated as an end-run around the Second Amendment. Some Idaho businesses were directly impacted by this effort.

In July 2017, Senator Tillis and I sent a letter to your predecessor, then-Attorney General Sessions, requesting a review of all options available to ensure lawful businesses are able to continue to operate without fear of significant financial consequences, and asked for a statement ensuring that Operation Choke Point would no longer be in effect. We received a commitment from the Department that it had ended Operation Choke Point. Last November, my republican Banking Committee colleagues and I wrote FDIC Chairman Jelena McWilliams to again confirm that banks are not cutting off lawful businesses simply because they were viewed as unfavorable by certain administrations.

1. Do you believe Operation Choke Point was inappropriate and should not have been initiated?

RESPONSE: (b) (5)

2. Will you commit to review whether DOJ has actually ended Operation Choke Point?

RESPONSE: (b) (5)

3. Will you assure that, if confirmed, you will not resurrect Operation Choke Point or any other program aimed to cut off access to payment systems and banking services for merchants in politically disfavored industries?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR KENNEDY

1. The 2014 Supreme Court Case, Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., addressed the use of disparate-impact as a theory for determining discriminatory practices. While the case addressed the Fair Housing Act, the analysis has applicability to the Equal Credit Opportunity Act and the banking regulators' use of disparate impact as a theory for determining discriminatory practices. The Court held that a disparate impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing the disparity.

The Department of Justice's 1996 memorandum on identifying lender practices that may form the basis of a pattern or practice referral remains in effect. The memo references a de minimis violation, which would be of pattern or practice referral that would return the investigation from the DOJ back to the referring agency. Will you commit, upon your confirmation, to expeditiously update the 1996 guidance and clarify what the DOJ views to be a de minimis violation?

RESPONSE: (b) (5)

2. President Trump just signed my bill called the JACK Act (Justice Against Corruption on K Street) into law. This bill requires lobbyists convicted of bribery, extortion, fraud and embezzlement to disclose it. The law falls short of prohibiting corrupt lobbyists from lobbying the government. Would you support a full prohibition on lobbying by those convicted of these crimes?

RESPONSE: (b) (5) Per CRM

3. Last time you were here, you said in your hearing you would be in favor of an amendment banning certain types of semiautomatic rifles. You also said you "would prefer a limitation on the clip size." Will you uphold our second amendment rights as our Attorney General and have your views changed since that hearing?

RESPONSE: (b) (5)

4. In 2010, Live Nation and Ticketmaster completed a merger of the world's largest concert promoter and with the world's leading ticket provider. The consent decree--set to expire in 2020--was designed to increase competition and prohibit Live Nation from leveraging its market power in live entertainment to obtain primary ticketing contracts. There is little dispute that the consent decree has been unsuccessful meeting that goal. Since the merger, Live Nation Entertainment has solidified its dominant position in ticketing; some estimates suggest Ticketmaster controls 80% of primary ticketing. Today, its footprint extends beyond concert promotion and primary ticketing services to artist management, venue ownership, and secondary ticketing services. As the consent decree comes close to expiration, how will the Department of Justice be reviewing this matter? Do you think that the consent decree should be extended? In what ways could the consent decree be modified to account for TM/Live Nation's increased anti-competitive behavior?

RESPONSE: (b) (5)

5. Last year the US Attorney for the Western District of Louisiana announced that three different illegal aliens were deported for the third time to Mexico and Honduras in November alone. How can we stop illegal aliens from reentering the country repeatedly, especially in cases where they are violent criminals? These deportations are costly and use our already limited resources. Would you support deported individuals' country of origin to pay for these efforts?

RESPONSE: (b) (5)

6. I arranged for several meetings with local officials and the Attorney General regarding New Orleans' sanctuary city status. The city of New Orleans and the Department of Justice entered into a consent decree to get the city into compliance. The decree stated that the city must notify ICE within 48 hours of releasing an undocumented immigrant from jail and it must allow ICE to interview an undocumented immigrant while in custody. It is my understanding that the city has made progress on the decree but is still not fully compliant. Would you be willing to take away grant funding to sanctuary cities that refuse to enforce federal law?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR FEINSTEIN

1. In your written testimony, you said that your “goal will be to provide as much transparency as I can consistent with the law” with respect to any report produced by Special Counsel Mueller. You also said that “where judgments are to be made by me,” you would make those judgments based solely on the law. As you may be aware, recent reports suggested that President Trump’s legal team is “gearing up” to “strongly assert the president’s executive privilege” in an effort to prevent information in the report from becoming public. (Carol D. Leonnig, *A beefed-up White House legal team prepares aggressive defense of Trump’s executive privilege as investigations loom large*, WASH. POST (Jan. 9, 2019))

- a. Have you discussed with anyone the use of executive privilege in connection with Special Counsel Mueller’s report? If so, with whom, when, and what was discussed?

RESPONSE: (b) (5)

- b. If confirmed, what standards would you apply and what process would you follow in evaluating any claims of executive privilege asserted by the President?

RESPONSE: (b) (5)

- c. How will you ensure your desire to grant the public and Congress “as much transparency” as possible is not impeded by the White House’s interest in preventing full disclosure of the report?

RESPONSE: (b) (5)

2. Despite your pledge at your hearing “to provide as much transparency as [you] can,” you also indicated that you might not provide the report that Special Counsel Mueller will prepare at the conclusion of his investigation pursuant to the Justice Department’s Special Counsel regulations. Rather, you committed only to providing your own “report based on that report.” Will you commit, if confirmed, to provide to Congress the full report that Special Counsel Mueller prepares at the end of his investigation?

RESPONSE: (b) (5)

3. In June 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Steve Engel, the head of the Department of Justice Office of Legal Counsel, and to President Trump’s personal attorneys criticizing Special Counsel Robert Mueller’s

investigation. (Memo from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel re: Mueller's "Obstruction" Theory (June 8, 2018)) Please provide a complete list of everyone to whom you gave the memo, when it was provided, whether there was any communication about the memo before or after it was delivered, and why you provided it.

RESPONSE: (b) (5)

4. You testified that "It is very common for me and for other former senior officials to weigh in on matters that they think may be ill advised and may have ramifications down the road." Please provide a list of all other topics under the Justice Department's jurisdiction where you submitted a legal memo to the Department or the White House, the dates the memos were provided, and whom they were submitted to.

RESPONSE: (b) (5)

5. I wrote to you about the June 2018 Mueller memo in December, but I'd like you to clarify your answers for the record.
 - a. You testified no one asked you to write the memo. Why did you decide to do so?
 - b. At the time you submitted this memo to officials at the Justice Department and President Trump's attorneys, had you talked to anyone about a possible Attorney General nomination? If so, with whom, when, and what was discussed?
 - c. Did you consult anyone during the process of drafting this memo? If so, whom?
 - d. Did you discuss this memorandum or its contents with Mr. Rosenstein, Mr. Engel, or anyone at the Department of Justice before or after you submitted it? If so, with whom, when, and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?
 - e. Did you discuss this memorandum or its contents with anyone else? If so, with whom and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?

RESPONSE: (b) (5)

6. During your hearing, you reserved the right not to follow advice from career Department ethics officials.
 - a. If you are confirmed, will you commit to providing to the Committee any advice career Department ethics officials give you about recusal related to this memo or any other matter related to the Special Counsel's investigation?

- b. If you disregard or disagree with advice from career ethics officials, will you also commit to providing an explanation of the basis for your disagreement and how you plan to address any concerns raised?

RESPONSE: (b) (5)

- 7. What steps will you take if you are confronted with a legal question or matter where the outcome might implicate the President's business or other financial interests?

RESPONSE: (b) (5)

- 8. Longstanding Justice Department policies limit communications between the Justice Department and the White House about pending or contemplated investigations to a select few officials. (Memorandum from the Attorney General for Heads of Department Components, All United States Attorneys re: Communications with the White House and Congress (May 11, 2009)) This policy helps insulate Justice Department decisionmaking from political influence and protects potentially sensitive law enforcement information. At his nomination hearing, Deputy Attorney General Rosenstein confirmed that this policy was still in place and committed to enforcing it. (S. Hrg. *Confirmation Hearing on the Nomination of Rod Rosenstein to be Deputy Attorney General* (Mar. 7, 2017))

When you were asked at your hearing what the current Justice Department communications policy is, you said, "Well, it depends -- it depends what it is, but on criminal matters I would just have the AG and the deputy."

- a. Are you familiar with the longstanding Justice Department policy memorialized in a May 2009 letter from Attorney General Holder? If you are confirmed, do you commit to enforcing this policy and ensuring that both the Justice Department and the White House know the rules?
- b. You also stated in the hearing, you thought you would strengthen the policy. What did you mean by that?

RESPONSE: (b) (5)

- 9. The Justice Department and FBI consistently decline to comment publicly or to Congress about open investigations. The Inspector General calls this the "stay silent" rule and says that rule, among other things, protects "the integrity of an ongoing investigation" and "the Department's ability to effectively administer justice without political or other undue outside influences." (Department of Justice, Office of the Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018) at p. 371) For similar reasons, nearly two decades ago, the Justice Department informed Congress in a letter to Rep. John Linder that "[t]he Department's longstanding policy is to decline to provide Congressional

committees with access to open law enforcement files.” (Linder Letter, 1/27/00)

- a. Are you familiar with this longstanding Justice Department policy against public disclosure of information about open investigations?
- b. If you are confirmed, do you commit to enforcing this policy against public disclosure of information about open investigations?
- c. Is the disclosure of information about a confidential source consistent with this policy?
- d. Is providing FISA applications relevant to an ongoing investigation consistent with this policy?

RESPONSE: (b) (5)

10. You have repeatedly endorsed an expansive view of presidential power, referred to as the “unitary executive theory.” (William P. Barr, Assistant Attorney General, Office of Legal Counsel, *Common Legislative Encroachments On Executive Branch Authority*, (July 27, 1989)) Under this theory, the President would have virtually limitless control over the Executive Branch, and very few, if any, checks on his constitutional authorities.

At your hearing, you promised to allow Special Counsel Mueller’s investigation to continue unimpeded if you are confirmed as Attorney General and committed to complying with the Justice Department’s Special Counsel regulations. Under the unitary executive theory, would the President have the power to direct the Attorney General's to rewrite the regulations?

RESPONSE: (b) (5)

11. The Supreme Court rejected the unitary executive theory in *Morrison v. Olson*, 487 U.S. 654 (1988).

- a. Do you believe *Morrison v. Olson* was correctly decided?
- b. In your view, are laws requiring the President to have “good cause” before removing heads of independent agencies constitutional?
- c. During your hearing you said, “the President can fire a U.S. Attorney. They are a presidential appointment.” Was it acceptable for the President to dismiss seven U.S. Attorneys for prosecuting Republican elected officials or not prosecuting Democratic elected officials in 2006?

RESPONSE: (b) (5)

12. You have said that, as Attorney General, you advised President George H.W. Bush that you “favored the broadest” pardon for Caspar Weinberger and several other individuals implicated in the Iran-Contra Affair. (Miller Center Interview, 4/5/01) Then-Independent Counsel Lawrence Walsh said the decision to issue these pardons “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office—deliberately abusing the public trust without consequence.” (David Johnston, *Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-Up'*, N.Y. TIMES (Dec. 25, 1992))

- a. Do you believe the President’s pardon authority is subject to any limits? What would constitute an abuse of presidential pardon authority?
- b. Could a President under criminal investigation pardon his co-conspirators?
- c. Could a President offer a pardon in exchange for a witness’s agreement not to cooperate with investigators?
- d. Could the President grant pardons in exchange for bribes?

RESPONSE: (b) (5)

13. In your view, what are the options for holding a president accountable for abuse of the pardon authority? During your hearing, you were asked if the President has authority to use money appropriated to the Defense Department to build a wall on the border. You responded, “without looking at the statute, I really could not answer that.”

- a. Now that you have had the opportunity to review any relevant statutes, please state whether you believe the President can use money currently appropriated to the Defense Department to build a border wall.
- b. Putting aside the statute, do you believe the President has inherent authority under the Constitution to use appropriated funds regardless of what Congress dedicated the funds for?

RESPONSE: (b) (5)

14. In 2005, the George W. Bush Administration issued a signing statement reserving the President’s right to decline to enforce the Detainee Treatment Act’s ban on torture. The statement argued the ban could infringe on the President’s Commander in Chief authority. (Bush Signing Statement (Dec. 30, 2005))

- a. Do you agree with this signing statement?
- b. Do you believe it was lawful?

RESPONSE: (b) (5)

15. Have you reviewed the Executive Summary of the Senate Select Committee on Intelligence's Study into the CIA's Detention and Interrogation Program? If confirmed, will you commit to reviewing the full, classified study before you work on any matter regarding detainee treatment or interpretation of the Convention Against Torture or Geneva Conventions?

RESPONSE: (b) (5)

16. During your hearing, you told Senator Grassley that, if confirmed, you will ensure that the Justice Department will respond in a timely manner to requests from both Committee Chairs and Members of Congress.
- a. Will you specifically commit to timely responding to minority requests—not just requests from a Chair or members of the majority?
 - b. When Congress requests information from the Executive Branch, how and in what circumstances is executive privilege properly invoked? What standards and process will you use to evaluate the legitimacy of presidential executive privilege claims?

RESPONSE: (b) (5)

17. On January 16, 2019, the U.S. General Services Administration (GSA) Office of Inspector General released a report regarding the Old Post Office Building that GSA leases to President Trump and a corporation he wholly owns. The report concluded that GSA attorneys acted improperly when they "agreed [that the lease presented] a possible violation of the Foreign Emoluments Clause but decided not to address the issue." This conclusion was based, in part, on the GSA attorneys' "fail[ure] to seek OLC's guidance, even though [they] knew that OLC issued opinions on the Foreign and Presidential Emoluments Clauses." (GSA OIG Report at p. 16) During your hearing, you repeatedly discussed the importance of seeking the Office of Legal Counsel's guidance when faced with complex constitutional questions.
- a. The Justice Department has also been confronted with issues related to President Trump's financial holdings and the Emoluments Clauses. If confirmed, do you commit to seeking guidance from OLC on the applicability of the Emoluments Clauses to President Trump's personal financial interests?
 - b. Do you commit to make public any OLC opinion on the applicability of the Emoluments Clauses to President Trump's personal financial interests to enable the public to understand OLC's reasoning and conclusions about the issue?

RESPONSE: (b) (5)

18. Please describe the selection process that led to your nomination to be Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: (b) (5)

19. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

RESPONSE: (b) (5)

20. Have you spoken with anyone about possible recusal from the Special Counsel's investigation? If so, with whom, when, and what was discussed?

RESPONSE: (b) (5)

21. Did President Trump or anyone else ever ask you to promise not to recuse from the Special Counsel's investigation?

RESPONSE: (b) (5)

22. You previously wrote: "The fact that terrorists' actions have been made criminal does not preclude the government from treating them as enemy combatants without any rights under our criminal justice system." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Do you still hold that view?

RESPONSE: (b) (5)

23. You previously wrote: "Thus, where the government sees an *individual* foreign person apparently acting as a terrorist, that should be a sufficient basis to conclude that the individual is not part of 'the people' and thus not protected by the Fourth Amendment." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Is it your position that non-citizens, even those located in the United States, are not protected by the Fourth Amendment of the Constitution? If so, what is the basis for that view?

RESPONSE: (b) (5) Per CRM

(b) (5) Per CRM

24. Is the President authorized under Article II of the Constitution to conduct warrantless domestic security surveillance? Please explain your answer.

RESPONSE: (b) (5)

25. Does the President have authority under Article II of the Constitution to conduct bulk collection of Americans' telephone metadata? Please explain your answer.

RESPONSE: (b) (5)

26. You previously wrote: "Numerous statutes were passed, such as FISA, that purported to supplant Presidential discretion with Congressionally crafted schemes whereby judges become the arbiter of national security decisions." (*Testimony of William P. Barr before the House Select Committee on Intelligence* (Oct. 30, 2003))

- a. In your view, is the President required to follow laws enacted by Congress governing surveillance? If not, please explain the basis for this conclusion.
- b. Are there any aspects of existing surveillance law, including the Foreign Intelligence Surveillance Act (FISA), that you believe the President can disregard? Please identify specific legal provisions and the basis for your conclusion that these provisions do not apply to the President.
- c. Is the Foreign Intelligence Surveillance Act (FISA) the exclusive means for the President to conduct foreign intelligence electronic surveillance in the United States? Please explain your answer.

RESPONSE: (b) (5)

27. Previous Attorney General nominees, including your predecessor, agreed to seek and follow the advice of career ethics officials about questions of recusal that may arise during service in the Justice Department.

- a. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of the companies — private and public, including parent companies, subsidiaries, and related entities — for which you have served on the board of directors or advisors? These companies include Och-Ziff Capital Management Group, LLC; Dominion Energy, Inc.; Time Warner, Inc.; Holcim (US) Inc. and Aggregate Industries Management, Inc.; Selected Funds; and Dalkeith Corporation.
- b. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of your legal and consulting clients, including but not limited to Caterpillar and Credit Agricole?
- c. If you will not commit to following the advice of career ethics officials, will you

commit to providing to Congress the advice that they provided to you along with an explanation of why you are not following their advice?

RESPONSE: (b) (5)

28. According to the ethics agreement prepared by the Justice Department's Justice Management Division on January 11, 2019, you agree if confirmed to "not participate personally and substantially in any particular matter involving specific parties in which" the law firm Kirkland & Ellis "is a party or represents a party," unless you first receive authorization to participate. That prohibition applies for a period of one year after your resignation from Kirkland.

- a. If confirmed, will you commit to following this agreement even if it applies to investigations conducted by Special Counsel Mueller?
- b. If confirmed, will you commit to following this agreement even if it applies more broadly to investigations into potential interference in the 2016 Presidential election, including but not limited to investigations into collusion and/or obstruction of justice?

RESPONSE: (b) (5)

29. During your confirmation hearing to be Attorney General in 1991, you said that the right to privacy in the Constitution does not "extend[] to abortion" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-505, Pt. 2, *Confirmation Hearing on the Nomination of William P. Barr to be Attorney General* (Nov. 12, 1991) at p. 63) In a June 1992 hearing before the Senate Judiciary Committee, you echoed these comments and said the Supreme Court's 1992 decision in *Planned Parenthood v. Casey* "didn't go far enough" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-1121, *Proposed Authorizations for Fiscal Year 1993 for the Department of Justice* (June 30, 1992) at p. 47) At the time you made these remarks *Roe v. Wade* had been established precedent for 18 years. *Roe v. Wade* is now more than 40 years old and has survived more than three dozen attempts to overturn it.

- a. Is *Roe v. Wade* settled law? Do you still believe that *Roe v. Wade* should be overruled?
- b. Do you believe that the Due Process Clause of the Fourteenth Amendment includes a right to privacy?

RESPONSE: (b) (5)

30. As Attorney General, you argued that it was proper for the Justice Department to urge the Supreme Court to overturn established precedent. You said that "urging the Court to reconsider a prior decision serves the executive branch's obligation to the Constitution, without diminishing the Court's constitutional role." (15 CARDOZO L. REV. 31 (1993)).

When is it proper for the Justice Department to urge the Court to overturn precedent? What factors should the Department take into account before urging the Court to overturn precedent?

RESPONSE: (b) (5)

31. During an appearance on CNN in July 1992, while you were Attorney General, you said “I think this [Justice] Department will continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation.” (Evans and Novak, CNN Television Broadcast (July 4, 1992))

- a. Will you commit to ensuring that the Department of Justice does not call for reconsideration and overturning of *Roe v. Wade*, if you are confirmed as Attorney General?
- b. Will you commit to ensuring that the Department does not seek ways, short of overturning *Roe*, to limit reproductive rights?

RESPONSE: (b) (5)

32. At your confirmation hearing, Senator Blumenthal asked whether you would defend *Roe v. Wade* if it were challenged. You responded that “usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that.” (S. Hrg, *Confirmation Hearing on the Nomination of William Barr to Be Attorney General* (Jan. 15, 2019) Tr. at 145)

- a. If confirmed, will you ensure that the Justice Department defends *Roe v. Wade* in court?
- b. Will you ensure that the Department does not argue that state restrictions do not constitute a “substantial burden” on a woman’s right to abortion?

RESPONSE: (b) (5)

33. At any point before or after your nomination to be Attorney General, has anyone from the Trump Administration discussed with you your views on *Roe v. Wade*? If so, please describe these discussions, including when they took place, who was involved, and what was discussed.

RESPONSE: (b) (5)

34. In the summer of 1991, while you were Deputy Attorney General, the anti-choice group Operation Rescue organized a six-week long protest of three abortion clinics in Wichita, Kansas. The protests resulted in 2,600 arrests. Judge Patrick Kelly, a federal district court

judge in Kansas, entered a preliminary injunction barring Operation Rescue and its protestors from blocking access to abortion clinics and physically harassing staff and patients. The Justice Department intervened in the litigation on behalf of Operation Rescue and sought to stay Judge Kelly's preliminary injunction order.

According to news reports, the Justice Department argued that the abortion clinics had not demonstrated that they would prevail in their lawsuit and that the specific requirements of the order intruded on the Marshals Service's discretion to enforce court orders. Although Judge Kelly granted the Justice Department's request to intervene in the lawsuit, he reportedly said he was "disgusted by this move" and he characterized the Justice Department's involvement as political. (*U.S. Backs Wichita Abortion Protestors*, ASSOCIATED PRESS (Aug. 7, 1991)).

During this time, the Justice Department was involved in a similar case in Virginia – *Bray v. Alexandria Women's Health*. This case concerned a lawsuit by several abortion clinics to prevent protestors from conducting demonstrations at clinics. The Justice Department again intervened on behalf of the protestors.

Please describe the nature and extent of your involvement in cases involving abortion clinic protests – including the Kansas and Virginia cases mentioned above – during your tenure as Deputy Attorney General and Attorney General under President George H.W. Bush.

RESPONSE: (b) (5)

35. There has been significant reporting about young migrants being forced to appear in immigration court hearings without adequate representation. For example, there have been reports of toddlers sipping milk bottles as they defend themselves in immigration court without their parents or guardians. (Sasha Ingber, *1-Year-Old Shows Up in Immigration Court*, NPR (July 8, 2018)) Courts have consistently held that anyone on United States soil is protected by the Constitution's right to due process. (*See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to [the] constitutional protection" in the Fifth and Fourteenth Amendments))
- a. Are toddlers receiving due process when they appear alone in immigration court?
 - b. If confirmed, what specific steps will you take to ensure that minors are adequately represented in immigration court proceedings?

RESPONSE: (b) (5)

36. At your hearing, Senator Durbin discussed the zero-tolerance policy implemented by then-Attorney General Sessions that led to the separation of over 2,000 children from their parents at the Southern border. Specifically, he asked you whether you agree with the zero-tolerance policy decision. You acknowledged that the Administration walked

back its family separation policy in a June 2018 executive order, but you did not directly answer Senator Durbin's question.

- a. Do you agree with the Zero Tolerance policy?
- b. Do you agree with separating children from their parents when they arrive in the United States? If yes, why? If not, why not?
- c. If confirmed, will you commit that the Justice Department will not continue, reinstate, and/or defend policies that lead to family separations?

RESPONSE: (b) (5)

37. If confirmed, will you enact policies that restrict asylum law or lead to prolonged or indefinite detention of children and families? Such policies include changing the definition of "particular social group" to exclude families or forcing parents to choose between being detained with their children and being separated but allowing their children to apply for asylum.

RESPONSE: (b) (5)

38. President Trump has determined that asylum seekers who have already filed asylum claims within the United States will be forced to wait in Mexico while their claims are adjudicated. In Mexico, many of these asylum seekers, including small children, have no fixed address, but instead camp out in stadiums or on the street.

An asylum seeker who demonstrates a credible fear of persecution must receive an opportunity to make his or her case before an immigration judge. This means the asylum applicant will need to receive documents from the Justice Department, including hearing notices, in Mexico, where they have no fixed address and where legal requirements for service of documents differ from the requirements for service in the United States.

How will the Justice Department ensure that asylum seekers with no fixed address in Mexico receive notice of the time and place of the hearings before the immigration judge, and receive documents regarding their case, including notices of changes in the Immigration Court calendar?

RESPONSE: (b) (5)

39. At your hearing, Senator Hirono asked whether you believe the 14th Amendment to the U.S. Constitution guarantees birthright citizenship. You responded that you "have not looked at that issue." The Citizenship Clause of the 14th Amendment states that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

- a. Do you agree that the 14th Amendment to the U.S. Constitution guarantees birthright citizenship? If not, on what basis did you reach that conclusion?
- b. Do you agree that a child born in the United States to undocumented parents is a citizen of the United States? If not, on what basis did you reach that conclusion?

RESPONSE: (b) (5)

40. Last October, President Trump announced plans to prepare an executive order ending birthright citizenship. Do you believe the President has the authority to nullify birthright citizenship by executive order?

RESPONSE: (b) (5)

41. A longstanding principle of U.S. asylum law is that a group of family members constitutes the “‘prototypical example’ of a particular social group” *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985). Nonetheless, the Acting Attorney General referred an immigration case to himself and asked the parties to brief “whether, and under what circumstances, an alien may establish persecution on account of membership in a particular social group under 8 U.S.C. 1101(a)(42)(A) based on the alien’s membership in a family unit.” (*Matter of L-E-A-*, 27 I&N Dec. 494 (A.G. 2018)) If confirmed, will you review the grounds for certifying this question to the Attorney General and, if you agree with the decision to do so, explain the basis for that decision to this Committee?

RESPONSE: (b) (5)

42. Under federal law, fugitives cannot legally purchase or possess guns. I am deeply troubled that the Justice Department has now issued guidance that forced the FBI National Instant Criminal Background Check System database — also called NICS — to drop more than 500,000 names of fugitives with outstanding arrest warrants. I know that local law enforcement shares these concerns. Apparently, the FBI was forced to drop these names because the Justice Department has further narrowed the definition of “fugitive” to include only those who cross state lines to avoid prosecution.

- a. If confirmed, will you commit to reviewing the Justice Department’s decision about who qualifies as a “fugitive”?
- b. Do you think this decision put public safety at risk? Why or why not?

RESPONSE: (b) (5)

43. Following the murders of nine churchgoers at Emanuel AME church in South Carolina in 2015, the FBI admitted it did not properly obtain information regarding the gunman’s

drug arrest record, which should have prohibited him from buying a handgun. Because the FBI had not received the correct information within 3 days, the dealer was legally permitted to complete the sale to the gunman. As a result, 9 were killed.

Would you support extending or eliminating the three-day requirement that allows a gun dealer to transfer a gun without a completed background check? If not, please explain why you would not support this change.

RESPONSE: (b) (5)

44. I am increasingly concerned about legislation that would imperil police officers in California and nationwide, specifically a proposal to force every state to recognize concealed-carry permits issued by other states, even those states that have less stringent standards for issuing concealed carry permits. Major national law enforcement organizations, such as the International Association of Chiefs of Police and the Major Cities Chiefs Association, have recognized how dangerous such a proposal would be for officers nationwide.

- a. Do you believe the Second Amendment requires California to recognize a concealed-carry permit from Alabama or Texas? Do you believe that this is required by any other constitutional provision? Please provide a yes or no answer and explain your reasoning.
- b. What is your position on legislation that requires one state to recognize concealed-carry permits issued by other states? Please explain the basis for your views.

RESPONSE: (b) (5)

45. The Administration recently issued a regulation to ban bump stocks, which essentially transform semi-automatic rifles into machineguns. In 2017, bump stocks enabled the shooter in Las Vegas to carry out the most catastrophic mass shooting in American history. That regulation, however, has now been challenged in court, and it may not be upheld. A law, however, would not be vulnerable to the same sort of challenge. If confirmed, do you commit to support legislation to ban bump stocks?

RESPONSE: (b) (5)

46. Many domestic violence abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are still able to stockpile an arsenal of firearms and ammunition. That is despite being prohibited from possessing firearms or ammunition under federal firearms law. Local domestic violence programs often attempt to help victims by seeking enforcement of federal law and removal of the firearms, but they are unable to get assistance from the Department of Justice and other federal agencies. Similarly, local law enforcement is often overwhelmed by the sheer

number of firearms in the possession of domestic violence offenders.

If you are confirmed, how will the Department of Justice improve its response to cases like these, which are likely to lead to homicides, and what kind of resources will you devote to make sure that guns are not as accessible to domestic abusers?

RESPONSE: (b) (5)

47. We are at an important moment in our nation with regarding to addressing sexual assault and the MeToo movement. If confirmed as Attorney General, what will the Department of Justice's role and priorities be with regards to addressing sexual assault through the Office on Violence Against Women and the Office for Victims of Crime?

RESPONSE: (b) (5)

48. If confirmed as Attorney General, will you commit to working with Congress to reauthorize the Violence Against Women Act, including improvements to support the national response to domestic violence, dating violence, sexual assault, and stalking?

RESPONSE: (b) (5)

49. As Attorney General, you will be responsible for enforcing the landmark Voting Rights Act, which has proven instrumental to expanding the right to vote for all Americans, and minorities in particular. But with its 2013 decision in *Shelby County v. Holder*, the Supreme Court gutted the law by severely limiting the ability of the Justice Department to block discriminatory voting laws from taking effect in states with a history of limiting minority voting rights. This majority based its decision on its conclusion that "the conditions that originally justified these measures no longer characterize voting" in states with a history of discriminatory voting practices.

- a. Do you agree that "the conditions that originally justified [the application of preclearance provisions in the Voting Rights Act to certain states] no longer characterize voting" in states with a history of discriminatory voting practices?
- b. If confirmed, would you support legislation to restore the preclearance provisions struck down by the Court in *Shelby County*?

RESPONSE: (b) (5)

50. On October 20, just weeks before the 2018 election, President Trump tweeted: "All levels of government and Law Enforcement are watching carefully for VOTER FRAUD,

including during EARLY VOTING.” (President Donald Trump, (@realDonaldTrump), Twitter (Oct. 20, 2018, 8:36 AM)) And the day before the election, President Trump said: “All you have to do is go around, take a look at what’s happened over the years, and you’ll see. There are a lot of people — a lot of people — my opinion, and based on proof — that try and get in illegally and actually vote illegally.” (Amy Gardner, *Without evidence, Trump and Sessions warn of voter fraud in Tuesday’s elections*, WASHINGTON POST, (Nov. 5, 2018))

Are you aware of any evidence that “a lot of people” vote illegally? If not, are you concerned about statements like this undermining the public’s faith in election results?

RESPONSE: (b) (5)

51. Remarkably, in Texas, a voter can show a handgun license to vote, but not a student ID. And in Georgia, the name on a voter registration form must be identical to the applicant’s name as it appears on his or her ID. Any minor discrepancy or clerical error — for example, a hyphen on the voting application that does not appear on the ID — could be grounds for blocking voters from registering or for kicking voters off of the voting rolls. (Janell Ross, *It’s Time for a New Voting Rights Act*, THE NEW REPUBLIC (Nov. 13, 2018))

- a. What is the basis to allow someone to vote if they show a handgun license, but not a student ID?
- b. Is a minor discrepancy between a voter registration form and a photo ID — for instance, a hyphen in the name on a voting application that does not appear on the voter’s ID — a valid reason to purge a registered voter from the voting rolls?

RESPONSE: (b) (5)

52. Under longstanding policy, the Justice Department will defend the constitutionality of any statute so long as a reasonable argument can be made in its defense. Attorney General Sessions concluded that no reasonable argument could be made in defense of the ACA and, specifically, the ACA’s guaranteed-issue provision. During your confirmation hearing, you told Senator Harris that if you are confirmed, you “would like to review the Department’s position” in *Texas v. United States*, which challenges the ACA’s constitutionality. You also said that you were open to reconsidering the Department’s position in the case. (S. Hrg, Confirmation Hearing on the Nomination of William Barr to Be Attorney General (Jan. 15, 2019) Tr. at 301)

- a. Will you commit, if confirmed, to notifying Congress when you start and when you complete your review of the Department’s position in *Texas v. United States*? Will you commit to notifying Congress what the basis is for your decision?

- b. If confirmed, do you commit to consulting with career Justice Department attorneys before making any final decision as to the Department's position in the case?

RESPONSE: (b) (5)

53. The Justice Department announced in October 2018 that it planned to close the San Francisco field office of the Environment and Natural Resources Division. This office has focused on enforcing environmental laws and protecting public resources on the West Coast, particularly in California. I am deeply concerned that the closure of this office will allow polluters in California to avoid complying with our environmental laws.

If confirmed, will you commit to seeing if an alternative location can be identified to keep the office in Northern California?

RESPONSE: (b) (5)

54. You served in the Department of Justice at the time the Americans with Disabilities Act (ADA) was signed into law by President George H.W. Bush, on July 26, 1990. As you know, the ADA received broad, bipartisan support, passing the Senate by a vote of 91-6 and the House of Representatives by a vote of 377-28. When he signed the ADA, President Bush said the following: "Today we're here to rejoice in and celebrate another 'independence day,' one that is long overdue. With today's signing . . . every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom." (*Remarks of President George Bush at the Signing of the Americans with Disabilities Act*, (July 26, 1990)) But, of course, that equality, independence, and freedom depend on vigorous enforcement of the ADA. If confirmed, what specific steps will you take to ensure that the ADA is vigorously enforced?

RESPONSE: (b) (5)

55. I have long been a proponent of funding for anti-methamphetamine programs. I established the COPS Anti-Methamphetamine grants program in 2014 and later supported its authorization in the Substance Abuse Prevention Act. In 2018, 9 states were awarded COPS Anti-Methamphetamine grants, totaling more than \$7 million. These funds go to state law enforcement agencies and enable them to participate in meth-related investigative activities.

In fiscal year 2018, the Justice Department's budget proposed eliminating funding for this program. Given the increase in methamphetamine related deaths, if you are confirmed as Attorney General, will you commit to prioritizing and requesting funds for this program?

RESPONSE: (b) (5)

56. It is well established that former Attorney General Sessions opposes the legalization of marijuana, regardless of whether it is for medical or recreational purposes. In January of last year, he issued a memorandum to U.S. Attorneys, titled “Marijuana Enforcement.” In this memo, the former Attorney General rescinded what is known as the “Cole Memorandum,” which allowed states to implement their own marijuana laws without fear of federal interference, provided that they were in compliance with eight priority enforcement efforts.

In rescinding this memo, the Attorney General maintained that opioids and fentanyl, not marijuana, were the Department’s primary focus. I agree that other drugs of abuse should be prioritized over marijuana, and do not want to see Californians arrested if they are acting in compliance with State law.

You discussed this issue with Senator Booker at your confirmation hearing, when you said the following: “I am not going to go after companies that have relied on the Cole Memorand[um]. However, we either should have a Federal law that prohibits marijuana everywhere – which I would support myself because I think it is a mistake to back off on marijuana. However, if we want a Federal approach, if we want States to have their own laws, then let us get there and let us get there the right way.” (Hearing Tr. at 171) To clarify your position, please answer the following questions:

What is your position on the legalization of marijuana, whether for medical or recreational purposes?

RESPONSE: (b) (5)

57. In August 2016, the Department of Justice posted a notice in the Federal Register to solicit applications for the bulk manufacture of marijuana, intended to supply legitimate researchers in the United States. I understand that 26 applications, including 3 from California, were submitted in response. It has now been almost 3 years, and the Department has failed to take action on any of these applications. This delay could hinder important research that may lead to the development of FDA-approved drugs. (*Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States*, Federal Register (Aug. 12, 2016))

I asked former Attorney General Sessions about this delay on multiple occasions - both in questions for the record and through staff contact – and still have yet to receive a

response as to when a final decision will be made on these pending applications.

If you are confirmed, will you commit to taking immediate action on these applications?

RESPONSE: (b) (5)

58. Studies by the National Institute of Justice have found that drug courts are more effective in reducing rates of recidivism among offenders and cost less per participant as compared to the traditional criminal justice system. (*Do Drug Courts Work? Findings from Drug Court Research*, National Institute of Justice)

Do you support drug court programs, and if confirmed, will you prioritize funding for these programs?

RESPONSE: (b) (5)

59. On March 26, 2018, Commerce Secretary Wilbur Ross issued a memorandum directing the Census Bureau to add a question on citizenship status on the 2020 Census. Secretary Ross said that this question was requested by the Justice Department, which argued that the information is needed to enforce the Voting Rights Act (VRA). (Memorandum from Secretary Ross to Karen Dunn Kelley (Mar. 26, 2018))

The Census Bureau's decision is currently being challenged in *New York Immigration Coalition v. United States Department of Commerce*. As part of that case, John Gore, the then-Acting Assistant Attorney General for the Civil Rights Division, was recently deposed. In his deposition, Mr. Gore was asked the following: "You agree, right, Mr. Gore, that [citizenship] data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts?" Mr. Gore responded: "I do agree with that. Yes." (Gore Dep. Tr. at 300, *New York Immigration Coalition v. United States Dept. of Commerce*)

- a. Do you support the inclusion of a question on citizenship in the Census? If so, why?
- b. Do you agree with Mr. Gore that citizenship "data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts"? If not, on what basis do you disagree with his assessment?

RESPONSE: (b) (5)

60. According to Mr. Gore, after the Census Bureau received the Justice Department's request to add a citizenship question, the Census Bureau suggested that there might be a

method *other* than a citizenship question to get citizen voting age population data — also known as CVAP data — to the Justice Department for purposes of VRA enforcement. (Gore Dep. Tr. at 264-265) The Census Bureau’s plan, as detailed by the Census Bureau’s acting director, Dr. Ron Jarmin, in an email to Justice Department officials, was to “utilize[e] a linked file of administrative and survey data the Census Bureau already possesses,” rather than to add a citizenship question. According to Dr. Jarmin, this approach “would result in higher quality data produced at lower cost.” (Email from Ron S. Jarmin to Arthur Gary re: Request to Reinstate Citizenship Question on 2020 Census Questionnaire (Dec. 22, 2017)) The Justice Department rejected Dr. Jarmin’s offer to meet. According to Mr. Gore, Attorney General Sessions personally directed Mr. Gore to deny the meeting request. (Gore Dep. Tr. at 274 (“Q. And who informed you that the Department of Justice should not meet with the Census Bureau to discuss the Census Bureau’s alternative proposal for producing block-level CVAP data? A. The Attorney General.”))

- a. Should the Justice Department have the best available data for purposes of enforcing the Voting Rights Act? If not, why not?
- b. If confirmed, do you commit to allowing the Justice Department to meet with the Census Bureau to discuss the Bureau’s views as to how to provide the best citizenship data?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR LEAHY

1. When I asked you whether you would commit to seeking and following the guidance of Justice Department ethics officials on whether to recuse yourself from Russia investigation, you stated that you would “seek” their advice but that you “make the decision as the head of the agency as to my own recusal.” Thus you’ve fallen short of former Attorney General Sessions’ commitment to seek and follow the Department’s ethics officials with respect to his recusal from the Russia investigation – which he did. And your testimony falls even shorter than that of former Attorney General Richardson’s far stronger commitments, which he made because he believed it was “necessary to create the maximum possible degree of public confidence in the integrity of the process.”
 - a. Whether or not as a technical matter you, as Attorney General, would have the authority to decide whether to recuse yourself, do you agree that following the advice of career ethics officials on the question would help create the “maximum possible degree of public confidence” in the “integrity of the process,” especially given your high profile opinions and writings about Special Counsel Mueller’s investigation?

RESPONSE: (b) (5)

- b. If you will not agree to seeking and following the guidance of Justice Department ethics officials regarding whether you should recuse yourself from the Russia investigation, will you commit to providing the House and Senate Judiciary Committees with detailed, contemporaneous documentation showing: (1) the analysis and conclusion of the Department’s ethics officials on the question; (2) your own analysis and conclusion on the question; and (3) if you arrive at a different conclusion from the Department’s ethics officials, a written explanation of why your conclusion is better supported by the law and the facts?

RESPONSE: (b) (5)

2. I asked during your confirmation hearing about your view, as reported in the New York Times in November 2017, that you saw more basis for a federal investigation of the Uranium One deal than an investigation into potential collusion with Russia. You stated to the New York Times at the time that by not pursuing the Uranium One deal, along with investigating the Clinton Foundation, the Justice Department was “abdicating its responsibility.” In response on Tuesday, you disputed the New York Times’

characterization of your assertion regarding Uranium One. You testified that the Uranium One assertion was not in quotes and you were actually making a broader point about the need for the Department to launch investigations in an even-handed, consistent way. You referenced John Huber, the United States Attorney for Utah, who was later appointed, in the spring of 2018, by then-Attorney General Sessions to investigate multiple matters of political interest to Republicans. After this exchange, the New York Times took the unusual step of releasing your email revealing your full comment, which included, in relevant part, “I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] Foundation, is far stronger than any basis for investigating so-called ‘collusion.’”

- a. On what basis did you claim in November 2017 that the Uranium One deal was deserving of a federal investigation?

RESPONSE: (b) (5)

- b. Do you still believe that the Justice Department is “abdicating its responsibility” to the extent that it is not pursuing the Uranium One matter?

RESPONSE: (b) (5)

- c. Do you still believe that the predicate for investigating Uranium One is “far stronger” than for investigating collusion between Russia and the Trump campaign?

RESPONSE: (b) (5)

- d. If a president calls for a politically motivated criminal investigation, what is the proper role for the Attorney General? Do you believe an Attorney General must conduct a preliminary review to determine if further investigation is warranted? If so, what could this review entail?

RESPONSE: (b) (5)

3. During any conversation with President Trump, including the one in summer 2017 regarding legal representation and recently regarding your nomination, did you discuss the Russia investigation? If yes, what was said?

RESPONSE: (b) (5)

4. I am very concerned with press freedom around the world, and especially the increasing attacks on journalists in the United States. During your hearing, Senator Klobuchar

asked you if the Department of Justice would jail reporters for doing their jobs, and you stated that you could think of a situation where a journalist “could be held in contempt.”

- a. Can you give specific examples of situations in which you would consider attempting to jail a journalist?

RESPONSE: (b) (5)

- b. President Trump regularly expresses his displeasure with many news organizations and reporters by name. How would you ensure that any actions the Department takes are not driven by the President’s politically motivated animosity, or are not tainted by the appearance of a political motivation?

RESPONSE: (b) (5)

5. When President Trump fired former Acting Attorney General Sally Yates for refusing to defend his Muslim Ban, you wrote an op-ed defending his decision and criticizing Yates. You argued that when the “president determines an action is within his authority — even if that conclusion is debatable” — the Attorney General’s responsibility is to “advocate the president’s position in court.”

- a. Is that how you still see the role of the Attorney General — to execute a president’s policy and defend his actions even when his authority is highly questionable or appears to be flawed?

RESPONSE: (b) (5)

- b. If an Attorney General cannot support a president’s policy, do you believe the only option available to him or her is to resign?

RESPONSE: (b) (5)

6. In the 1990s you often attributed the nationwide spike in crime to a “breakdown of traditional morality” and the “promotion of secularism.” This is how you described it on Larry King Live in 1992: “We have the highest crime rate in the world, and that’s unfortunate. And I think that has to do with a lot of aspects about our society—our heterogeneity, and so forth.” Can you explain what you meant by this comment? Did you believe that our nation’s diversity led to increased crime?

RESPONSE: (b) (5)

7. You've long been a proponent of mass incarceration, arguing in 1994 that "increasing prison capacity is the single most effective strategy for controlling crime." You also testified during your hearing that your views were shaped by the nation confronting a rise in crime during the early 1990s.

- a. Do you still believe that increasing prison capacity is the most effective strategy for controlling crime?

RESPONSE: (b) (5)

- b. In recent years, in dozens of states across the country, prison rates and crime rates have fallen together. How do you explain that?

RESPONSE: (b) (5)

8. During a 1995 panel you claimed that social programs fail to reduce crime and may even exacerbate it. In an article you published in the Michigan Law and Policy Review in 1996 titled "A Practical Solution to Crime in our Communities," you argued, in part, for the reduction of social programs that, in your view, increase rates of crime. Do you still agree with these ideas?

RESPONSE: (b) (5)

9. In 2001, you stated the illicit drug trade should be treated like a national security issue, and that for those involved in trafficking organizations, "there are only two end games: You either lock them up or you shoot them, one or the other." You also said "I believe you can use law enforcement to some extent, particularly in the U.S., but the best thing to do is not to extradite Pablo Escobar and bring him to the United States and try him. That's not the most effective way of destroying that organization." Of course, that is exactly what is happening in the Eastern District of New York right now, with the trial of Joaquin "El Chapo" Guzman. If the options are to either lock them up or shoot them, and you don't believe the U.S. government should be extraditing people like Escobar, what exactly were you proposing the U.S. government do?

RESPONSE: (b) (5) Per CRM

10. During your previous confirmation hearing, you testified that you “wouldn’t defend regulations . . . if [you] don’t think the regulation is consistent with Congress’s intent.” One of the core statutes governing asylum, 8 U.S.C. § 1158, states that any alien who arrives in the United States “whether or not at a designated port of arrival . . . may apply for asylum.” Despite this statute, President Trump recently issued a rule categorically denying asylum claims made outside of ports of entry. The Supreme Court has upheld a nationwide injunction temporarily halting this rule, but the Justice Department is appealing it. If confirmed, would you instruct the Justice Department to continue defending President Trump’s asylum rule even though it is facially inconsistent with congressional intent and the explicit wording of an unambiguous statute?

RESPONSE: (b) (5)

11. The Office of Legal Counsel, which you headed for a year under President George H.W. Bush, is a powerful gatekeeper responsible for determining the legality of the President’s proposed actions. If the President proposes an action—say, declaring a national emergency—based on a characterization of the facts that is demonstrably false, does the OLC have any responsibility to scrutinize those falsehoods as part of its review?

RESPONSE: (b) (5)

12. You have praised former Attorney General Jeff Sessions for “breaking the record for prosecution of illegal-entry cases” and increasing illegal re-entry prosecutions “by 38 percent.” While illegal immigration is no doubt a problem we must address, the Justice Department has finite resources. On November 14, 2018, I wrote a letter to acting Attorney General Matthew Whitaker inquiring whether resources for prosecutions of serious criminal offenses were being re-directed toward immigration prosecutions. Indeed, as immigration prosecutions were ramped up under former Attorney General Sessions, across the border prosecutions of other crimes steadily decreased — without any indication that the rate of these crimes actually subsided. Would you continue the Department’s recent aggressive focus of prosecutorial resources on low level immigration offenses even if the result is the Department is unable to prosecute other serious crimes it once handled?

RESPONSE: (b) (5)

13. I asked you during the hearing about whether your views of the third party doctrine have evolved given the Supreme Court’s recent decision in *Carpenter v. United States*; you testified you had not reviewed the decision. Please do so and respond to the following:

- a. Do you still believe that “no person has Fourth Amendment rights in . . . records left in the hands of third parties”?

RESPONSE: (b) (5) Per CRM

- b. Do you believe that there comes a point at which collection of data about a person—e.g., metadata, geolocation information, etc.—becomes so pervasive that a warrant would be required, even if collection of one bit of the same data would not?

RESPONSE: (b) (5) Per CRM

14. In 1987, the D.C. Circuit Court of Appeals held that Georgetown University’s refusal to grant equal rights on campus to two LGBTQ affinity groups constituted a violation of D.C.’s Human Rights Act, which prohibits sexual orientation discrimination by educational institutions. In an article published in *The Catholic Lawyer* in 1995, you wrote that these types of laws seek to “ratify” conduct that was previously considered immoral, and this consequently dissolves any form of moral consensus in society. Do you still believe that laws granting equal protection to LGBTQ individuals “dissolve any form of moral consensus in society”?

RESPONSE: (b) (5)

15. The Violence Against Women Act was enacted in 1994, a year after you left the Department of Justice. Senator Crapo and I worked together to reauthorize the act in 2013. Our 2013 reauthorization expanded protections for many of the most vulnerable among domestic violence and sexual assault survivors – students, immigrants, LGBT victims, and those on tribal lands.

- a. Will you commit to support the implementation of these life-saving protections contained in the 2013 reauthorization?

RESPONSE: (b) (5)

- b. During your prior tenure as Attorney General, how did you approach the Department's responsibility for prosecuting crimes committed on Indian Reservations? How do you intend to ensure that the investigation and prosecution of crime on Native reservations is a priority going forward?

RESPONSE: (b) (5)

- c. Will you commit to visiting a tribal court implementing VAWA jurisdiction within your first year, should you be confirmed?

RESPONSE: (b) (5)

- 16. According to Article II, Section 4 of the U.S. Constitution, "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." In your view, what constitutes a high Crime or Misdemeanor?

RESPONSE: (b) (5)

- 17. President Trump has stated many times that voter fraud is rampant in this country and has claimed that millions of votes were illegally cast in favor of Hillary Clinton during the 2016 presidential election. Most recently, President Trump said that people go vote, get back in their cars, put on a disguise and go back in and vote again.

- a. Are you aware of any credible evidence to substantiate either of President Trump's claims?

RESPONSE: (b) (5)

- b. Is it important that when a president makes assertions relevant to the integrity of our voting systems, as well as relevant to potential federal crimes under the purview of the Justice Department, that he or she have a factual basis for doing so?

RESPONSE: (b) (5)

18. When asked by Senator Feinstein about the Constitution's prohibition on emoluments, you testified that you believed "there is a dispute as to what the emoluments clause relates to," and that you "couldn't even tell [Senator Feinstein] what it says." In 2016, then-Chairman Grassley and Senator Tillis questioned then-Attorney General Lynch on whether the receipt of any payment "from a foreign government or an instrumentality of a foreign government" by a spouse of an executive branch officer violated the Constitution. Such questions are even more pressing when it is the constitutional officer himself receiving such payments. Given the interest from senators, I trust you have had an opportunity to review the Emoluments Clause since last week. The actual text states that "no person holding any office of profit or trust under [the United States] shall, without the consent of the Congress, accept of any present, emolument, office, or title . . . from any king, prince, or foreign state."

- a. Since President Trump has not divested from his businesses, does the rent paid by the Industrial and Commercial Bank of China to the President-elect for space at Trump Tower in New York raise concerns vis-à-vis the Emoluments Clause? The Bank, which is owned by the Chinese government, is according to news reports the largest tenant in Trump Tower.

RESPONSE: (b) (5)

- b. Does money paid by various foreign governments for the use of event space or lodging at the President's hotel here in Washington raise concerns vis-à-vis the Emoluments Clause?

RESPONSE: (b) (5)

- c. There are currently several lawsuits regarding a potential violation of the Emoluments Clause, including one from the attorneys general of Maryland and the District of Columbia. While subpoenas were issued a month ago, but the Department of Justice is asking for an appeals court to block this lawsuit from continuing. If confirmed as Attorney General, would you continue to appeal the decision of the District Court and attempt to end the lawsuit?

RESPONSE: (b) (5)

19. The General Services Administration (GSA) leases the Old Post Office Building for the Trump International Hotel in Washington, D.C. Recently, the Inspector General for the GSA issued a report stating that the agency lawyers ignored the constitutional issues that arose when they reviewed the lease after President Trump won the election in November 2016. The Inspector General concluded that, "following the 2016 election, it was necessary for GSA to consider whether President-elect Trump's business interest in

the OPO lease might cause a breach of the lease upon his becoming President. The evaluation found that GSA, through its Office of General Counsel (OGC) and its Public Buildings Service, recognized that the President's business interest in the lease raised issues under the Foreign Emoluments and Presidential Emoluments Clauses of the U.S. Constitution that might cause a breach, but decided not to address those issues." This seems to suggest that there is a continuing concern with respect to conflicts of interest, the STOCK Act, and the Emoluments Clause.

- a. What is the Justice Department's role in enforcing the Emoluments Clause?

RESPONSE: (b) (5)

- b. If there is an apparent violation, would the Department conduct any inquiry or investigation?

RESPONSE: (b) (5)

20. Article 36 of the Vienna Convention on Consular Relations (VCCR) requires parties to the treaty to promptly inform, upon arrest, nationals of signatory nations that they have the right to meet with consular officials. The United States is a party to the VCCR, but there are a number of well documented cases in which the U.S. is not in compliance with our Article 36 obligations, and that noncompliance has strained our relationships with a number of important allies including Great Britain and Mexico. To help ensure compliance with Article 36, the U.S. Supreme Court adopted an amendment to Rule 5 of the Federal Rules of Criminal Procedure mandating that a judge presiding at the defendant's initial appearance inform "a defendant who is not a United States citizen [that he or she] may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested."

- a. Do you believe full compliance with Article 26 of the VCCR is important?

RESPONSE: (b) (5)

- b. Will you commit to ensuring full compliance with respect to any and all undocumented immigrants who are arrested, including if the arrest was executed by the Department of Homeland Security's Immigration and Customs Enforcement, for "acts that constitute a chargeable criminal offense"?

RESPONSE: (b) (5)

21. In December 2008, the Unaccompanied Alien Child Protection Act was signed into law as part of the Trafficking Victims Protection Reauthorization Act. Among other things, members of Congress worked on the 2008 and 2013 reauthorization bills to ensure that

children who arrive in the United States without a parent or guardian, are, to the greatest extent practicable, provided with counsel to represent them in legal proceedings. Not only is it common sense that putting a child alone before a judge is fundamentally unfair and will not result in a just, informed outcome, but legal representation serves as an effective tool to ensure compliance with immigration laws. Studies show that the rate of unaccompanied minors who show up for immigration court increases from 60.9 percent to 92.5 percent when represented by a lawyer.

- a. Will you commit, if confirmed, to work with the Secretaries of Health and Human Services and Homeland Security to provide as many unaccompanied children as possible with legal representation?

RESPONSE: (b) (5)

- b. Similarly, will you commit, if confirmed, to facilitating increased collaboration between the Department of Justice’s Executive Office for Immigration Review, known as EOIR, and community-based organizations to provide legal representation for migrant children separated from their parents?

RESPONSE: (b) (5)

22. The Inspector General for the Department of Health and Human Services released a report stating that the family separation policy began in summer of 2017. Thousands of children may have been separated before a court order forced HHS to keep track of the children they were separating from their parents. HHS also says they face challenges identifying the children.

- a. Do you believe that “zero tolerance” and family separation served as a useful deterrent to migrant families fleeing Central America?

RESPONSE: (b) (5)

- b. Would you consider resurrecting such policies under any circumstances?

RESPONSE: (b) (5)

23. In April 2001 at the Miller Center, you discussed your decision to intern HIV positive refugees in a separate camp on Guantanamo, stating: “We were using Guantanamo Bay, and it seemed like every other week I would be called over to meet with Colin Powell, [Dick] Cheney, and Brent Scowcroft, and they, of course, were complaining Their position was, Guantanamo is a military base, and why were all these people here, the HIV people, all these other people? How long are you going to be on our property with this unseemly business? I’d say, ‘Until it’s over. But we’re not bringing these people

into the United States.’ This is a very convenient base outside the United States, and it’s serving a good function. They were always complaining. I would say, what do you people do at Guantanamo? Maybe this is the highest, best use of Guantanamo. Maybe Guantanamo should be turned over to the INS [Immigration and Naturalization Service] and used as a processing center. Maybe this is the best use for the United States as opposed to whatever you people do with it. We got a little bit feisty.” Ultimately, all Haitian refugees were released from Guantanamo after a federal district court found many of their constitutional rights to have been repeatedly violated. It is reported that the Departments of Justice and Homeland Security are currently considering the extra-territorial processing of asylum seekers in Mexico. Many immigration law experts believe that these proposals, like the failed Guantanamo policy, cannot be lawfully executed. Will you commit to ensuring that those who seek asylum in the United States or at our borders will have the opportunity to have their claims processed from within the United States, with all the rights provided by the Constitution and federal law accorded to them?

RESPONSE: (b) (5)

24. A federal district court judge found that the medical conditions facing HIV positive detainees in Camp Bulkeley - directly under your control - were deplorable and insufficient. In *HCC v. Sale*, Judge Johnson specifically noted that military doctors had made the INS, which was under your control at the time, aware of these problems, but that your agency failed to act: “The military’s own doctors have made INS aware that Haitian detainees with T-cell counts of 200 or below or percentages of 13 or below should be medically evacuated to the United States because of a lack of facilities and specialists at Guantanamo. Despite this knowledge, Defendant INS has repeatedly failed to act on recommendations and deliberately ignored the medical advice of U.S. military doctors that all persons with T-cell count below 200 or percentages below 13 be transported to the United States for treatment. Such actions constitute deliberate indifference to the Haitians’ medical needs in violation of their due process rights.” *Haitian Centers Council Inc. v. Sale*, 823 F.Supp. 1028, 1044 (EDNY 1993). During this period, one of your spokespeople at the INS, Duane Austin stated publicly, “We have no policy allowing people with AIDS to come enter the United States for treatment. ... They’re just going to die anyway, aren’t they?” A federal district court judge found that the agency directly under your control acted with deliberate indifference to the medical needs of migrants in U.S. government care. Today, the Department of Justice oversees the adjudication of the cases of tens of thousands of migrants in facilities operated by ICE where medical care is again suspect. NGOs report that, consistently, at least half of deaths in ICE custody are attributable to medical negligence. Sexual abuse is reported to be rampant, and DHS’s own Inspector General has found that conditions in immigration detention “undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment.” What can the Department of Justice take to ensure that there is

accountability for medical negligence and malfeasance committed by DHS and/or DOJ officials in the immigration detention setting?

RESPONSE: (b) (5)

25. During your hearing, you stated that you would uphold the law of marriage equality, but that there needs to be accommodations made for religious purposes. However, you stated that the Department of Justice would only have a role in banning anti-LGBTQ discrimination only if Congress passes a law.

- a. What actions would you take, if any, if a state or local official refuses to issue a marriage license to a same-sex couple?

RESPONSE: (b) (5)

- b. When is it appropriate, if ever, to disregard a Supreme Court opinion, such as the one that protected same-sex marriage under the Constitution?

RESPONSE: (b) (5)

26. In 2016, Congress reformed the Freedom of Information Act, which codified the “presumption of openness” that requires all administrations to operate with transparency as the default setting. If confirmed as Attorney General, how will you enforce the presumption of openness? Will you commit to fully enforcing the object and purpose of FOIA and to encourage transparency?

RESPONSE: (b) (5)

27. Several reports have come out that T-Mobile executives have repeatedly booked rooms at President Trump’s Washington, D.C. hotel. Many have suggested that the executives have booked this hotel in the interest of furthering the success of the merger between T-Mobile and Sprint, which is being reviewed by the Department of Justice.

- a. Can you guarantee that the decision of the Justice Department’s antitrust division merger, if made during your time as Attorney General, will be unaffected by any executives’ decision to spend money at the President’s hotel?

RESPONSE: (b) (5)

- b. What steps will you take to ensure reviews of proposed mergers are free of political considerations?

RESPONSE: (b) (5)

28. In 2005, you testified before Congress that constitutional protections do not apply to Guantanamo detainees because "[t]he determination that a particular foreign person seized on the battlefield is an enemy combatant has always been recognized as a matter committed to the sound judgment of the Commander in Chief and his military forces. There has never been a requirement that our military engage in evidentiary proceedings to establish that each individual captured is, in fact, an enemy combatant." You also argued that even if constitutional protections did apply, the military's "[Combatant Status Review Tribunal] procedures would plainly satisfy any conceivable due process standard that could be found to apply." You recommended that Congress consider legislation to "eliminate entirely the ability of enemy aliens at Guantanamo Bay to file habeas petitions." Congress ultimately did so in the Military Commissions Act of 2006, which the Supreme Court held to be an unconstitutional suspension of the Writ of Habeas Corpus in *Boumediene v. Bush*. In *Boumediene*, the Court also found the military review procedures to be constitutionally inadequate. Do you support the holdings in *Boumediene v. Bush* as settled law?

RESPONSE: (b) (5)

29. In 2005, you testified that the Geneva Conventions do not apply to captured individuals affiliated with al Qaeda or the Taliban. The Supreme Court in *Hamdan v. Rumsfeld* rejected this view and held that Common Article III of the Geneva Conventions apply to the conflict in question. Do you support the holdings in *Hamdan v. Rumsfeld* as settled law?

RESPONSE: (b) (5)

30. You stated in 2005 that there "does not appear to be any real argument that these [military commission] trials belong in civilian courts." Since 9/11, there have been 8 convictions in military commissions, half of which have been partially or fully overturned. By contrast, there have been over 600 individuals convicted of terrorism-related offenses in civilian courts in that same period. The military commission trials of the individuals suspected of committing the 9/11 and U.S.S. Cole terrorist attacks do not yet have start dates. Do you still believe that there is not "any real argument" for prosecuting these cases in Article III federal courts?

RESPONSE: (b) (5)

31. In recent years, there have been hundreds of cases in which individuals were exonerated based on faulty forensic evidence. This has long been an issue of bipartisan concern, and Senator Grassley and I have raised it on numerous occasions with officials from the Justice Department.

- a. Will you commit to working with Members of this Committee to ensure that law enforcement and criminal justice stakeholders have the strongest and most reliable forensic tools possible to ensure that crimes are solved, public safety is protected, and wrongful convictions are avoided?

RESPONSE: (b) (5)

- b. As you know, the FBI reviewed thousands of cases involving erroneous hair analysis testimony, resulting in the exoneration of innocent people and, in some cases, the identification of the true perpetrators of crimes. They then performed a Root Cause Analysis (RCA) to begin to understand what exactly led to the incredible amount of erroneous testimony. Will you work with the FBI and others to ensure that this RCA is completed promptly and that its results are made public for review, and to ensure this type of error is not repeated going forward in this or other forensic disciplines?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR DURBIN

1. In your June 8, 2018 memo, you acknowledge that there are many ways in which a President could commit obstruction of justice – for example by altering evidence, suborning perjury, or inducing a witness to change testimony. But your memo makes an assumption that Special Counsel Mueller’s obstruction theory relies on one particular obstruction of justice statute, 18 U.S.C. 1512—a statute you believe should not be used to investigate actions that you feel are within a President’s lawful authority.

Based on this assumption about Special Counsel Mueller’s obstruction theory, your memo concludes that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction.” In other words, you urge Special Counsel Mueller’s supervisor not to allow Mueller to take a certain action in an ongoing investigation and not to allow Mueller to ask the President any questions about obstruction, even though you concede that you are “in the dark about many facts” and that you are making assumptions about the legal obstruction theory.

- a. Is it appropriate for you to urge Special Counsel Mueller’s supervisor to block Mueller from taking an action in an ongoing criminal investigation when you do not know all the facts and were speculating about Mueller’s legal theory?
- b. Is it appropriate for you to flatly urge Special Counsel Mueller’s supervisor that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction” when there are numerous potential obstruction theories besides 18 U.S.C. 1512 that Special Counsel Mueller may want to question the President about?
- c. Is it still your view that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction”?
- d. In your January 14 letter to Chairman Graham, you said of your memo that “my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory.” You noted in your January 14 letter that you shared the memo with the several of the President’s defense attorneys. Did you also forward the memo to the Special Counsel’s Office so they could consider your views the potential implications of the theory? If not, why not?

- e. Did any of the President's attorneys whom you sent your memo tell you that they agreed with your view that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?
- f. Did any of the President's attorneys whom you sent your memo tell you that they used your memo to argue that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?

RESPONSE: (b) (5)

- 2. Because your June 8, 2018 memo expresses stark views about what you feel should and should not be permitted as part of the Special Counsel's ongoing criminal investigation, and because you sent your memo to Special Counsel Mueller's supervisor and to members of President Trump's defense team without informing the Special Counsel's Office of your memo, a reasonable person could conclude that you would not be impartial if issues arise as part of the Special Counsel investigation that require the Attorney General to make decisions regarding obstruction of justice, including decisions about what information about obstruction of justice should be included in reports to the Committee and the public. Therefore you should, at minimum, seek the advice of career Department ethics officials regarding recusing yourself from such decisions, pursuant to 5 CFR 2635.502(a)(2), given the legitimate questions that your memo and your use of it have raised about your impartiality.
 - a. Will you commit, if confirmed, to seek the advice of DOJ career ethics officials on this recusal question?

RESPONSE: (b) (5)

- b. If so, will you commit to promptly inform the Committee what advice the DOJ career ethics officials gave and whether you will follow it?

RESPONSE: (b) (5)

- 3. At your hearing you said that you would decline to follow the advice of career DOJ ethics officials "if I disagree with them." When you previously worked in the Justice Department, did you ever decline to follow the advice of career DOJ ethics officials? If so, please discuss when you did so and why.

RESPONSE: (b) (5)

- 4. At your hearing, Professor Neil Kinkopf said: "It is clear that Barr takes the DOJ regulations to mean that he should release not the Mueller report, but rather his own report. Second, he reads DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict—declination decisions. In combination with the DOJ view that a sitting president may not be indicted, this suggests that Barr will take the position that

any discussion or release of the Mueller report relating to the President, who, again, cannot be indicted, would be improper and prohibited by DOJ policy and regulations.”

- a. Do you take DOJ regulations to mean that you should release not the Mueller report, but rather your own report?

RESPONSE: (b) (5)

- b. Do you read DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict?

RESPONSE: (b) (5)

- c. Do you believe it would be improper and/or prohibited by DOJ policy or regulations to provide Congress or the public with any discussion or release of parts of Mueller’s report relating to the President?

RESPONSE: (b) (5)

- d. 28 CFR 600.9(c) provides that “The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions” (emphasis added). Do you read the term “these reports” to include the report issued by the Special Counsel to the Attorney General pursuant to 28 CFR 600.8(c)?

RESPONSE: (b) (5)

- e. 28 CFR 600.9(c) also provides that “All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law.” Is it your view that this sentence governs the release of information concerning matters handled by Special Counsels to Congress, as opposed to public release?

RESPONSE: (b) (5)

- f. Do you adhere to OLC’s view, stated in its October 16, 2000 opinion “A Sitting President’s Amenability to Indictment and Criminal Prosecution,” that “a sitting President is immune from indictment as well as from further criminal process” and that the Constitution provides the Legislative Branch the only authority to bring charges of criminal misconduct against a president through the impeachment process?

RESPONSE: (b) (5)

- g. If you believe the answer to (f) is yes, then shouldn't Congress be given access to the Special Counsel's full investigative findings so that Congress can best evaluate whether or not to hold a President accountable for potential criminal misconduct through the impeachment process?

RESPONSE: (b) (5)

- 5. At your hearing you said "well, under the current regulations the special counsel report is confidential. The report that goes public would be a report by the attorney general." You later said "the AG has some flexibility and discretion in terms of the AG's report."

If confirmed, will you use this flexibility and discretion to make sure the public can see Special Counsel Mueller's own words about his findings and conclusions to the greatest extent possible, rather than your own summary or interpretation of Special Counsel Mueller's words?

RESPONSE: (b) (5)

- 6. Do you agree with the statement of then-CIA Director Pompeo, who said on July 21, 2017 that "I am confident that Russians meddled in this election, as is the entire intelligence community....This threat is real."

RESPONSE: (b) (5)

- 7. Will you commit that, if you are confirmed:

- a. You would be willing to appear before the Senate Judiciary Committee to testify and answer questions specifically about the Special Counsel investigation after Special Counsel Mueller submits his concluding report?

RESPONSE: (b) (5)

- b. You would not object to Special Counsel Mueller appearing before the Senate Judiciary Committee to testify and answer questions about the Special Counsel investigation after he submits his concluding report?

RESPONSE: (b) (5)

- 8. During your confirmation hearing in 1991, you said "[t]here are a lot of different ways politics can come into play in a case." You went on to say "you shouldn't sweep anything under the rug. Don't cut anyone a special break. Don't show favoritism."

- a. Do you still stand by these principles?

RESPONSE: (b) (5)

- b. Will you ensure that Special Counsel Mueller's findings are made available to Congress and to the public, so that the Special Counsel's findings are not swept under a rug?

RESPONSE: (b) (5)

- c. The President's attorneys, led by Rudy Giuliani, are apparently preparing their own report to counter the Mueller report. Presumably there will be no redactions sought and no executive privilege claimed by the Administration over the contents of the Giuliani report, in contrast to the President's expected efforts to hide much of the Mueller report from Congress and the people. Are you concerned that it would seriously undermine the confidence of the American people in our justice system if the Special Counsel Mueller's findings were swept under the rug or heavily redacted while the full Giuliani report was tweeted out to the American people?

RESPONSE: (b) (5)

- 9. Other than your 19-page memo that you sent to Deputy Attorney General Rosenstein and OLC head Steven Engel on June 8, 2018, have you sent any other memos to Justice Department officials urging them to follow a course of action in an ongoing criminal investigation since you left the Department in 1993? If so, please describe the date and contents of each memo you sent.

RESPONSE: (b) (5)

- 10. Why did you not mention in your June 8, 2018 memo that you had met with President Trump in June 2017 and discussed the possibility of joining the President's legal defense team? Would that information have been relevant for the recipients of your June 8, 2018 memo to know?

RESPONSE: (b) (5)

- 11. On November 14, 2017, you emailed Peter Baker of *The New York Times* and said "I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] foundation, is far stronger than any basis for investigating so-called 'collusion.'"

- a. Why did you describe collusion as "so-called" in this email?
- b. Why did you put the word collusion in quotation marks in this email?
- c. Why have you long believed that the predicates for investigating the uranium deal and the foundation are "far stronger" than any basis for investigating potential crimes that are commonly described as falling under the umbrella of collusion?

RESPONSE: (b) (5)

12. Why did you put the word obstruction in quotation marks in the subject line of your June 8, 2018 memo?

RESPONSE: (b) (5)

13.

- a. Was Attorney General Sessions wise to follow the advice of DOJ ethics officials and recuse himself from matters relating to the presidential campaign, including the Mueller investigation?

RESPONSE: (b) (5)

- b. Was Acting Attorney General Whitaker unwise to disregard the advice of DOJ ethics officials that he should recuse himself from the Mueller investigation because a reasonable person would question his impartiality?

RESPONSE: (b) (5)

- c. What message does it send to the American people if Attorneys General establish a practice of disregarding the ethics advice of career DOJ ethics officials?

RESPONSE: (b) (5)

14. In your hearing testimony you quoted the following statement from your 1991 confirmation hearing: “The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics. Nothing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of law.”

President Trump has repeatedly denigrated Special Counsel Mueller and his investigation, calling it “unfair,” a “witch hunt” and a “hoax.” He also has tweeted and sent public signals to witnesses and targets in the investigation regarding their conduct. In your view, has the President gone too far with political interference in Mueller’s investigation?

RESPONSE: (b) (5)

15. When you were working as a private sector attorney:

- a. Did you ever represent Russian individuals or corporations as clients? If so, please provide details on the dates and nature of the representation.
- b. Did you ever have dealings with the Russian government or Russian oligarchs? If so, please provide details.

RESPONSE: (b) (5)

16. During your 1989 confirmation hearing to head the Office of Legal Counsel, you said at one point that the Attorney General is “the chief lawyer in the administration. He is the President’s lawyer; he is the lawyer for the cabinet” (emphasis added). Do you stand by this characterization of the Attorney General’s role?

RESPONSE: (b) (5)

17. During your hearing we discussed a January 25, 1996 speech you gave at the University of Virginia’s Miller Center, in which you essentially admitted to taking actions as Attorney General for political purposes. You said: “After being appointed, I quickly developed some initiatives on the immigration issue that would create more border patrols, change the immigration rules, and streamline the processing system. It would furthermore put the Bush campaign ahead of the Democrats on the immigration issue, which I saw as extremely important in 1992. I felt that a strong policy on immigration was necessary for the President to carry California, a key state in the election.”

This admission that you developed initiatives to “change the immigration rules” to “put the Bush campaign ahead” stands in stark contrast to the commitment you made in your 1991 confirmation hearing for Attorney General, where you said: “The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics.”

- a. Why did you feel it was appropriate to develop initiatives to “change the immigration rules” as Attorney General for purposes of helping the political fortunes of the Bush campaign despite the commitment you made during your confirmation hearing?

RESPONSE: (b) (5)

- b. Is it appropriate for an Attorney General to “change the rules” to help the political campaign of the President who appointed him?

RESPONSE: (b) (5)

- c. If confirmed, do you believe it would be within your proper role to develop initiatives to “change the immigration rules” in ways that would help the 2020 Trump campaign?

RESPONSE: (b) (5)

18. In an April 5, 2001 panel at the University of Virginia’s Miller Center, you said “my experience with the Department is that the most political people in the Department of Justice are the career people, the least political are the political appointees.” Do you stand by this characterization of DOJ career employees?

RESPONSE: (b) (5)

19. Did anyone at the White House or the Justice Department advise you not to meet with Democratic members of this Committee in advance of the hearing, and if so, who gave you this advice?

RESPONSE: (b) (5)

20. On October 18, 2017, Attorney General Sessions testified before the Senate Judiciary Committee for a Department of Justice oversight hearing. This was the only time he testified before the Committee as Attorney General. At this hearing, Attorney General Sessions did not provide a written copy of his testimony to the Committee members in advance of the hearing; in fact, an electronic copy of his testimony was emailed to my committee staff by the Department only after the hearing had begun. As a result of this late submission, Committee members were denied the opportunity to prepare questions in advance based on the Attorney General's written testimony. Will you commit that if you are confirmed, you will provide your written testimony to the full Committee 24 hours in advance of each hearing where you testify in accordance with the Committee's long-standing rules?

RESPONSE: (b) (5)

21. Attorney General Sessions never provided responses to written questions from this Committee from the Department of Justice oversight hearing on October 18, 2017. Other former Department officials have provided responses to this Committee's oversight questions after they have left the Department, including former FBI Director Comey who provided responses on December 4, 2018 to written questions following his appearance before the Committee on May 3, 2017. If confirmed, will you ensure that the Committee receives prompt answers to all the written questions that were submitted to Attorney General Sessions from the October 18, 2017 oversight hearing?

RESPONSE: (b) (5)

22. I appreciate that in your testimony you pledged to "diligently implement" the First Step Act.

- a. Will you direct prosecutors not to oppose eligible petitions for retroactive application of the Fair Sentencing Act if you are confirmed?

RESPONSE: (b) (5)

- b. The First Step Act authorizes \$75 million in annual funding for the next five fiscal years to carry out the Act's provisions. The actual cost of implementation is likely to be higher, and the Bureau of Prisons is already facing severe funding and staffing shortages. Will you pledge that, if confirmed, you will ensure that the Justice Department's budget requests include an increase of at least \$75 million, as

authorized to implement the First Step Act, as well as any additional funding needed to address previous shortfalls?

RESPONSE: (b) (5)

- c. The First Step Act became law on December 21. It mandates the Attorney General begin immediate implementation of certain reforms, and establishes deadlines for others. Among other things, it requires that an Independent Review Committee be established by the National Institute of Justice by Tuesday, January 21, 2019. This deadline has already been missed.

The First Step Act requires the Attorney General, not later than 210 days after the date of enactment, and in consultation with the Independent Review Committee, to develop and release publicly on the Department of Justice website a risk and needs assessment system. What steps will you take in order to ensure the risk assessment system is established by this deadline if you are confirmed?

RESPONSE: (b) (5)

- d. The First Step Act broadens applicability of the Safety Valve under 18 U.S.C. § 3553(f). Do you agree that this change applies to cases where a sentence for the offense has not yet been imposed? If you are confirmed, what guidance will you provide to prosecutors on the applicability of the safety valve in such pending cases?

RESPONSE: (b) (5)

23. In 1993 you co-wrote an article in *The Banker* entitled “Punishment that exceeds the crime – The crackdown on corporate fraud threatens to stifle the financial system.” In this article, you criticized what you described as an “overly hostile enforcement atmosphere” when it comes to investigation and prosecution of corporate fraud and white collar crimes.” You said this aggressive enforcement risks deterring entrepreneurial investment and “offending our notions of fundamental fairness.”

- a. Why did you urge caution when it comes to investigating and prosecuting white collar crimes as opposed to your aggressive approach to investigating and prosecuting drug offenses?

RESPONSE: (b) (5) Per CRM

- b. Should white collar criminals get different treatment from other criminals?

RESPONSE:

(b) (5) Per CRM

24. At a panel discussion before the Federalist Society in 1995 you said “violent crime is caused not by physical factors, such as not enough food stamps in the stamp program, but ultimately by moral factors.” You went on to say “spending more money on these material social programs is not going to have an impact on crime, and, if anything, it will exacerbate the problem.”

Since you made these comments, new research has gone a long way toward rebutting them. For instance, scientific evidence now shows that childhood exposure to trauma affects brain development and perpetuates the cycle of violence. Social programs that help prevent and address exposure to trauma in children can have a significant impact on ending the cycle of violence.

- a. Do you regret these comments you made in 1995 to the Federalist Society?

RESPONSE: (b) (5)

- b. Have your views on the relationship between social programs and violent crime changed since 1995?

RESPONSE: (b) (5)

- c. Is it your view that white collar crime is also ultimately caused by moral factors?

RESPONSE: (b) (5)

25. In 1992, when you were Attorney General, you issued a lengthy report called “The Case for More Incarceration” that said: “First, prisons work. Second, we need more of them.” And in an October 2, 1991 speech you described a high prison population as “a sign of success.” Over the last three decades, as a result of stiff mandatory minimums, the federal prison population grew by over 700%, and federal prison spending climbed nearly 600%. Federal prisons now consume one quarter of the Justice Department’s budget. And we hold more prisoners, by far, than any other country in the world. America has five percent of the world’s population but 25 percent of the world’s prisoners – more than Russia or China.

Meanwhile, use of illegal drugs actually increased between 1990 and 2014. The availability of heroin, cocaine, and methamphetamine also increased. And recidivism rates for federal drug offenders did not decline. Today the data is clear – there is no significant relationship between drug imprisonment and drug use, drug overdose deaths, and drug arrests.

Have your views about the value of incarceration changed as a result of what we've learned in the last three decades?

RESPONSE: (b) (5)

26. Now, we are facing another deadly drug epidemic, and some are proposing that we again respond with harsh mandatory minimum sentences. Today, a large body of research establishes that stiffer prison terms do not deter drug use or distribution. Do you agree that we cannot incarcerate our way out of the fentanyl epidemic?

RESPONSE: (b) (5)

27. During your testimony before this Committee, you acknowledged that “the heavy drug penalties, especially on crack and other things, have harmed the black community, the incarceration rates have harmed the black community.”

On May 10, 2017, Former Attorney General Sessions directed all federal prosecutors to always seek the maximum penalty in federal criminal prosecutions. During your confirmation hearing, you testified that you intend to continue this policy unless “someone tells me a good reason not to.” Yet you also testified that the “draconian policies” enacted in reaction to the crack epidemic resulted in “generation after generation of our people . . . being incarcerated,” and that it is time to “change the policies.” I agree. This seems to be a “good reason” not to continue the Sessions policy, which applies to violent and non-violent offenders alike. Will you commit to reviewing and revising the Sessions charging guidance if you are confirmed as Attorney General?

RESPONSE: (b) (5)

28. In recent years, the Federal Bureau of Prisons (BOP) workforce has faced a number of significant challenges—including severe staffing shortages that jeopardize their ability to ensure the safety of inmates, staff, and the public. These staffing concerns resulted from a hiring freeze imposed by the Trump Administration and implemented by former Attorney General Sessions. Additional hiring was also delayed after President Trump proposed an FY 2019 budget that inexplicably sought to cut an additional 1,168 BOP positions, while projecting an increase in BOP's prison population.

These staffing shortages have led to widespread reliance on “augmentation,” a practice that forces non-custody staff, such as secretaries, counselors, nurses, and teachers, to work as correctional officers—despite the fact that these employees lack the experience and extensive training of traditional correctional officers. Augmentation places staff at risk and reduces access to programming, recreation, and education initiatives—all of which are key to maintaining safe facilities and reducing recidivism.

- a. If confirmed, how will you address the ongoing staffing challenges at BOP?

RESPONSE: (b) (5)

- b. Will you commit, if confirmed, to ensuring that BOP is adequately staffed so that augmentation is no longer needed?

RESPONSE: (b) (5)

- c. The ongoing government shutdown has exacerbated an already-dangerous situation for BOP staff and has caused significant financial stress as they continue to work without a paycheck. If confirmed, how will you address the impact that this shutdown has had on BOP and other DOJ staff?

RESPONSE: (b) (5)

29. In an op-ed last November you praised Attorney General Sessions' immigration policies including, among other things, for "breaking the record for prosecution of illegal-entry cases." This praise came in the aftermath of Attorney General Sessions' disastrous "zero-tolerance" policy directing U.S. Attorneys along the Southwest border to criminally prosecute every illegal entry misdemeanor case referred by DHS, which included parents fleeing gang and sexual violence. The President of the American Academy of Pediatrics saw the zero-tolerance policy differently than you did— she called it "government-sanctioned child abuse". It led to the separation of thousands of families, some of whom have still not been reunited today.

- a. As Attorney General, would you adhere to the zero-tolerance policy?

RESPONSE: (b) (5)

- b. Do you think the zero-tolerance policy has been a success?

RESPONSE: (b) (5)

- c. Was it appropriate for a Federal District Court Judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?

RESPONSE: (b) (5)

30. On June 5, 2018, when asked, "Is it absolutely necessary . . . to separate parents from children when they are detained or apprehended at the border?" Attorney General Sessions answered, "Yes." Yet on June 21, 2018, after widespread public backlash, Attorney General Sessions claimed that the Administration did not anticipate the separation of families, stating: "We never really intended to do that." The Justice Department's Inspector General (IG) is reviewing the Justice Department's poorly planned and chaotic implementation of the zero-tolerance policy.

- a. Will you pledge that, if confirmed, you will implement the IG's recommendations so we can avoid a repeat of this disaster?

RESPONSE: (b) (5)

- b. Do you agree with Attorney General Sessions' comment that it is absolutely necessary to separate parents from children when they are detained or apprehended at the border?

RESPONSE: (b) (5)

31. On June 17, 2018, DHS Secretary Nielsen stated on Twitter "We do not have a policy of separating families at the border. Period." Was this an accurate statement?

RESPONSE: (b) (5)

32. Justice Department resources were reportedly diverted from federal drug-smuggling felony cases to handle immigration charges under the zero-tolerance policy. Was the zero-tolerance policy a wise use of Department resources?

RESPONSE: (b) (5)

33. Congress received a letter on January 9, 2019 from Judge Ashley Tabaddor, the President of the National Association of Immigration Judges. Judge Tabaddor explained that every immigration judge across the country is currently in a no-pay status. She added that every day the immigration courts are closed, thousands of cases are cancelled and have to be indefinitely postponed.

Judge Tabaddor stated that there is currently a backlog of more than 800,000 pending immigration cases, an increase of 200,000 cases in less than two years despite the largest growth in the number of active immigration judges in recent history. At the end of Fiscal Year 2016 there were 289 active judges, while currently there are over 400.

Judge Tabaddor said "When a hearing is delayed for years as a result of a government shutdown, individuals with pending cases can lose track of witnesses, their qualifying relatives can die or age-out and evidence already presented become stale. Those with strong cases, who might receive a legal status, see their cases become weaker. Meanwhile, those with weak cases – who should be deported sooner rather than later – benefit greatly from an indefinite delay."

Do you agree that the shutdown has hurt the administration of justice in our immigration courts and is worsening the immigration court backlog?

RESPONSE: (b) (5)

34. Do you believe a child can represent herself fairly in immigration court without access to counsel?

RESPONSE: (b) (5)

35. During the presidency of George H.W. Bush, the U.S. generously accepted refugees fleeing persecution from around the world. In Fiscal Year 1989 the U.S. resettled 107,070 refugees, in 1990, 122,066, in 1991, 113,389, and in 1992, 132,531. By contrast, in Fiscal Year 2018 the U.S. resettled just 22,491 refugees, less than half of the 50,000 target established by President Trump, and for 2019 the Trump Administration has established the lowest refugee admissions goal since the Refugee Admissions Program was created in 1980: a mere 30,000 refugees may be admitted this year, at a time when there are more than 25 million refugees worldwide, more than ever before, according to UNHCR.

- a. Did you have any role in the refugee admissions policy of the George H.W. Bush Administration, including providing any opinions to other cabinet departments and officials about the number of refugees admitted? Please describe your role, if any, in initiating and implementing this policy.

RESPONSE: (b) (5)

- b. Did you support the admission of over 100,000 refugees per year during President George H.W. Bush's Administration?

RESPONSE: (b) (5)

- c. Do you believe the refugee admissions ceiling established by President Trump for Fiscal Year 2019 (30,000) is an adequate response to the unprecedented global refugee crisis?

RESPONSE: (b) (5)

36. You have described yourself as a "strong proponent of executive power." In your June 8, 2018 memo, you went so far as to state that "constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He *alone* is the Executive branch."

President Trump has taken an aggressive and expansive view of presidential power. He has shown contempt for the federal judiciary unlike any president we can recall. He has undermined and ridiculed your predecessor, whom he chose. He has shown disrespect for the rule of law over and over again.

- a. In light of this record, do you believe President Trump is a faithful steward of executive power?

RESPONSE: (b) (5)

- b. Do you stand by your argument that President Trump *alone* is the Executive branch?

RESPONSE: (b) (5)

- c. Are you concerned about President Trump continuing to abuse executive power?

RESPONSE: (b) (5)

- d. Are you confident that the Justice Department and OLC will serve as a check and balance on any abuses of executive power by President Trump?

RESPONSE: (b) (5)

37. On multiple occasions, President Trump has issued pardons without any apparent consultation or vetting from the DOJ Office of the Pardon Attorney. For example, Scooter Libby, Joe Arpaio and Dinesh D'Souza were all pardoned by President Trump without even applying for a pardon, let alone going through the Justice Department's vetting process.

- a. In your view, is it appropriate for a President to exercise the pardon power without any input from the Justice Department?

RESPONSE: (b) (5)

- b. If you are confirmed, would you insist on the Department having input into clemency decisions, including the opportunity for the Office of the Pardon Attorney to vet clemency applicants?

RESPONSE: (b) (5)

38. On June 15, 2018, President Trump's attorney Rudy Giuliani said of the Special Counsel's Russia investigation: "When this whole thing is over, things might get cleaned up with some presidential pardons."

- a. In your view, does a statement like this constitute inappropriate interference in an investigation?

RESPONSE: (b) (5)

- b. When does it cross into obstruction of justice for a President or his representative to publicly hint that the pardon power might be used to reward investigation witnesses and targets who refuse to cooperate?

RESPONSE: (b) (5)

- c. In your view, would it constitute inappropriate interference in Special Counsel Mueller's investigation for President Trump to issue pardons to people under investigation or indictment by Special Counsel Mueller?

RESPONSE: (b) (5)

- d. On June 4, 2018, President Trump tweeted “I have the absolute right to pardon myself.” Do you agree?

RESPONSE: (b) (5)

- e. Would you advise a President against attempting to pardon himself?

RESPONSE: (b) (5)

- f. You have not been shy in discussing how you urged President George H.W. Bush to pardon Defense Secretary Caspar Weinberger and five other government officials involved in the Iran-Contra scandal. After President Bush issued these pardons in 1992, Lawrence Walsh, the independent counsel who led the Iran-Contra inquiry, said that the pardon of Weinberger and other Iran-contra defendants “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office — deliberately abusing the public trust without consequence.” If confirmed, how would you ensure that President Trump does not use the pardon power in a way that undermines the principle that no man is above the law?

RESPONSE: (b) (5)

39.

- a. As a general matter, do you believe it is a worthy goal for the Department of Justice to seek to remedy systematic constitutional and civil rights violations by police departments?

RESPONSE: (b) (5)

- b. On November 7, Attorney General Sessions issued a memo that drastically curtails DOJ pattern or practice investigations of police departments and limits the use of consent decrees to bring police departments into compliance with the Constitution. If confirmed, will you revisit the Sessions memo, which was hastily issued right before his resignation, to ensure the Department is fulfilling its responsibility to protect the American people from systemic Constitutional violations by police?

RESPONSE: (b) (5)

- c. In a March 31, 2017 memo, Attorney General Sessions stated that: “Local control and local accountability are necessary for effective local policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies.” Do you share that position? If so, was it inappropriate for Attorney General Sessions to petition a federal court in opposition to the policing reform consent decree that was independently negotiated between the City of Chicago and the Illinois State Attorney General last year?

RESPONSE: (b) (5)

40. Earlier this month, the *Washington Post* reported that the Trump Administration is “considering a far-reaching rollback of civil rights law that would dilute federal rules against discrimination in education, housing and other aspects of American life.”

Senior civil rights officials within DOJ were reportedly instructed to “examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be.” Officials at the Department of Education and the Department of Housing and Urban Development are also reportedly reviewing disparate impact regulations under their jurisdictions.

Disparate impact liability is a key civil rights enforcement tool.

The Supreme Court reaffirmed this in a 2015 case, holding that disparate impact claims are cognizable under the Fair Housing Act. Justice Kennedy, writing for the majority, noted that “[m]uch progress remains to be made in our Nation’s continuing struggle against racial isolation.... But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse.” The opinion concluded with the Court acknowledging the Act’s “continuing role in moving the Nation toward a more integrated society.”

- a. Do you agree that disparate impact liability is an important and valid civil rights enforcement tool?

RESPONSE: (b) (5)

- b. If so, will you agree not to take any actions to undermine disparate impact liability if you are confirmed?

RESPONSE: (b) (5)

41. In your 1991 confirmation hearing, you said “discrimination is abhorrent and strikes at the very nature and fiber of what this country stands for.” You also said “I intend to be vigilant in watching for discrimination, and I intend to be aggressive in rooting it out and enforcing the laws against it wherever it is detected.”

- a. Do you stand by that pledge today?

RESPONSE: (b) (5)

- b. Does your pledge include discrimination against LGBTQ Americans?

RESPONSE: (b) (5)

- c. Do LGBTQ Americans face discrimination today?

RESPONSE: (b) (5)

- d. Do you believe LGBTQ Americans have protections against discrimination under federal law?

RESPONSE: (b) (5)

- e. If so, in your opinion, what is the scope of federal protections for LGBTQ Americans?

RESPONSE: (b) (5)

- f. Do you agree that an individual cannot choose or change their sexual orientation, any more than an individual can choose or change their race or national origin?

RESPONSE: (b) (5)

42. In recent years, you have made troubling statements in opposition to efforts to combat LGBTQ discrimination. For example, in November 2018, you wrote a joint op-ed with former Attorneys General Ed Meese and Michael Mukasey “saluting” former Attorney General Sessions. You specifically praised Sessions for changing DOJ’s litigation position to argue that transgender people are not protected by Title VII’s prohibition on sex-based discrimination in the workplace. You suggested that this reversal “help[ed] restore the rule of law.” Further, in a 2007 panel discussion, you criticized the Supreme Court’s decision in *Lawrence v. Texas*, stating that “the striking down of the anti-sodomy laws in Texas on the grounds that ‘liberty’ entails some right to engage in sodomy and therefore the state’s ability to regulate that... [threw] out hundreds of years of understanding about the ability of local and state governments to engage in ‘moral’ legislation.”

Do you stand by those statements today?

RESPONSE: (b) (5)

43. When former Attorney General Sessions came before this Committee for an oversight hearing in October 2017, I asked him about his recently-issued guidance to all administrative agencies and executive departments on religious liberty issues. You praised this guidance in your November 2018 joint op-ed.

However, the guidance has received significant criticism, particularly in relation to its impact on the rights of LGBTQ Americans. The Human Rights Campaign had this to say about the guidance:

“A preliminary analysis of the Trump-Pence administration’s license to discriminate indicates that LGBTQ people and women will be at risk in some of the following ways:

- A Social Security Administration employee could refuse to accept or process spousal or survivor benefits paperwork for a surviving same-sex spouse;

- A federal contractor could refuse to provide services to LGBTQ people, including in emergencies, without risk of losing federal contracts;
- Organizations that had previously been prohibited from requiring all of their employees from following the tenets of the organization's faith could now possibly discriminate against LGBTQ people in the provision of benefits and overall employment status; [and]
- Agencies receiving federal funding, and even their individual staff members, could refuse to provide services to LGBTQ children in crisis, or to place adoptive or foster children with a same-sex couple or transgender couple simply because of who they are."

I asked then-Attorney General Sessions for his response to this analysis. He said he would get back to me, but he never did.

Do you believe that under this guidance, it is acceptable for a Federal government employee to cite their religious beliefs in refusing to serve or assist a same-sex couple?

RESPONSE: (b) (5)

44. In an April 1995 news report following the Oklahoma City bombing, you discussed the Bush administration's work countering domestic right-wing groups. You said "[w]e were concerned about extreme rightwing groups in the country, but the surveillance and investigation of these groups was not as thorough as it should have been because of domestic restrictions."

Right-wing extremism remains a significant threat today. To name just two recent examples, we've seen alleged fatal attacks by right-wing extremists in Charlottesville, Virginia and at the Pittsburgh Tree of Life Synagogue. A recent analysis by the *Washington Post* found the following: "Of 263 incidents of domestic terrorism between 2010 and the end of 2017, a third—92 —were committed by right-wing attackers."

- a. Do you agree that "extreme right-wing groups," to use your words, remain a significant domestic terrorism threat today?

RESPONSE: (b) (5)

- b. If confirmed, what steps will you take to combat this threat?

RESPONSE: (b) (5)

- c. Do you agree with President Trump's statement that "You also had some very fine people on both sides" of the white supremacist demonstrations in Charlottesville?

RESPONSE: (b) (5)

- d. Will you pledge to ensure that the Department of Justice directs sufficient resources to combat domestic terrorism?

RESPONSE: (b) (5)

- e. Will you also commit to ensuring that the Department of Justice provides regular briefings to this Committee on the Department's efforts to combat domestic terrorism?

RESPONSE: (b) (5)

- 45. In 2017, I introduced the Domestic Terrorism Prevention Act. This legislation would enhance the federal government's efforts to prevent domestic terrorism by requiring federal law enforcement agencies to regularly assess those threats and provide training and resources to assist state, local, and tribal law enforcement in addressing these threats.

Would you commit, if you are confirmed, to review this legislation and give us your feedback on it?

RESPONSE: (b) (5)

- 46. During your tenure as Attorney General, you oversaw the publication of the Justice Department's annual reports. The 1992 report emphasized the Department's "efforts to assure minorities a fair opportunity to elect candidates of their choice to public office through its administrative review of voting changes under Section 5 of the Voting Rights Act, as well as through litigation."

The 1992 report also specifically noted that "[t]he Attorney General interposed Section 5 objections to 16 statewide redistricting plans," including in Alabama, Georgia, and North Carolina.

Unfortunately, in 2013, a divided Supreme Court voted 5-4 in *Shelby County v. Holder* to gut the Voting Rights Act. The Court struck down the formula that determined which jurisdictions were subject to Section 5 preclearance.

- a. In your experience as Attorney General, did you find Section 5 preclearance to be an effective tool to combat voter suppression efforts?

RESPONSE: (b) (5)

- b. In light of your experience, what was your reaction to the *Shelby County* decision?

RESPONSE: (b) (5)

- c. What role do you believe that the Voting Section of the Civil Rights Division should play in enforcing federal voting laws?

RESPONSE: (b) (5)

- d. If confirmed, will you commit to ensuring that the Voting Section of the Civil Rights Division will be more aggressive in pursuing Section 2 cases against states and localities engaging in voter suppression efforts?

RESPONSE: (b) (5)

47. In the lead-up to the 2018 midterm election, we saw a number of significant voter suppression efforts across the country:

- Several states engaged in significant voter purges—a problematic method of cleaning up voter registration rolls that often deletes legitimate registrations, preventing voters from casting their ballots on Election Day. For example, in Georgia, on a single day in July 2017, more than a half million people were purged from the voter rolls—which totaled eight percent of Georgia's registered voters.
- Georgia also employed a controversial “exact match” system, which required names on voter registration records to exactly match voters’ names in the state system—so if you filled out one form as “Tom” and another as “Thomas,” your registration would be blocked. This led to 53,000 “pending” registrations being held up in the weeks before the election; nearly 70 percent of these registrations were for African-American voters.
- In North Dakota, a strict new voter ID law went into effect that required voters to present an ID with their residential street address. It was clear that the law would have a disproportionate impact on Native American communities, in which many community members do not have street addresses. It was estimated that 5,000 Native American voters would need to obtain qualifying identification before Election Day.
- Voters across the country also saw reduced access to voting after state and local governments shuttered polling locations and curtailed early voting opportunities. In Florida, election officials were ordered to block early voting at the state’s college and university campuses. And since the Supreme Court’s 2013 ruling in *Shelby County v. Holder* to gut the Voting Rights Act, almost 1,000 polling locations across the country have been closed—many of them in predominantly minority communities.

- a. Do you agree that these are examples of voter suppression?

- i. If so, what steps would you take as Attorney General to address similar voter suppression efforts in the future?

RESPONSE: (b) (5)

- ii. If not, what do you consider to be an incident of voter suppression?

RESPONSE: (b) (5)

- b. Do you think voter fraud is a problem that justifies these types of restrictive voting measures?

RESPONSE: (b) (5)

- c. Do you agree with President Trump's claims that 3-5 million people illegally voted in the 2016 election?

RESPONSE: (b) (5)

48. Despite frequent claims from Republicans that voter fraud is a rampant problem that must be addressed through restrictive voter laws, the most salient recent example of alleged election fraud was perpetrated by a Republican in the 9th Congressional District of North Carolina. A Republican House candidate, Mark Harris, apparently employed contractors who collected absentee ballots from mostly African-American voters and either filled them out for Harris or discarded them if they supported Harris' opponent. The North Carolina State Board of Elections has refused to certify Harris' purported 900-vote victory, and a local prosecutor has confirmed that an investigation is underway.

Do you support a federal investigation into apparent election fraud in North Carolina's 9th District?

RESPONSE: (b) (5) Per CRM

49. In your 1991 confirmation hearing, you were asked your views on the right to privacy. You stated:

I believe that there is a right to privacy in the Constitution...I do not believe the right to privacy extends to abortion, so I think that my views are consistent with the views that have been taken by the Department since 1983, which is that *Roe v. Wade* was wrongly decided and should be overruled.

Do you stand by that statement today in light of the Court's subsequent decisions in *Planned Parenthood v. Casey* (1992) and *Whole Women's Health v. Hellerstedt* (2016), which each affirmed the right to abortion?

RESPONSE: (b) (5)

50. Attorney General Sessions tried to block federal Byrne-JAG violence prevention grant funds in an effort to try to force unrelated immigration policy reforms on cities and states. At least 5 district courts and the 7th Circuit have held that the Justice department does not have the authority to impose unrelated grant conditions on programs like Byrne-JAG. However, Attorney General Sessions nonetheless refused to release these vital funds to cities like Chicago, which hurts the fight against deadly gun violence.

I don't think the Byrne-JAG program should be used as a political football in the immigration debate. Byrne-JAG is a formula grant program that was designed by Congress to give state and local jurisdictions flexibility to address their public safety needs. Ironically, the Byrne-JAG program was named for a New York City police officer who heroically gave his life to protect an immigrant witness who was cooperating with law enforcement.

Will you commit that if you are confirmed you will stop DOJ's withholding of Byrne-JAG funds to state and local communities as part of an effort to force immigration policy reforms?

RESPONSE: (b) (5)

51. In a June 5, 2005 hearing before the Senate Judiciary Committee, you said regarding the Bush Administration's detention policy: "Rarely have I seen a controversy that has less substance behind it. Frankly, I think the various criticisms that have been leveled at the administration's detention policies are totally without foundation and unjustified." In July 2005, you sat on a panel entitled "Civil Liberties and Security" hosted by the 9/11 Public Disclosure Project and said that "under the laws of war, absent a treaty, there is nothing wrong with coercive interrogation, applying pain, discomfort, and other things to make people talk, so long as it doesn't cross the line and involve the gratuitous barbarity involved in torture."

- a. Do you reject the reasoning of the OLC "torture memo," which claimed that the torture statute unconstitutionally infringed on the President's authority as Commander-in-Chief and was subsequently rescinded by the Bush Administration Justice Department?

RESPONSE: (b) (5)

- b. Do you acknowledge that the McCain Detainee Treatment Act, which passed the Senate with 90 votes in 2005 and which outlawed cruel, inhuman and degrading treatment, is constitutional? Do you pledge to abide by it?

RESPONSE: (b) (5)

- c. Is waterboarding torture?

RESPONSE: (b) (5)

- d. Can terrorists be successfully prosecuted and incarcerated in our domestic criminal justice system?

RESPONSE: (b) (5)

52. Under Attorney General Sessions, the Justice Department changed its previous litigation position and decided to stop defending the constitutionality of the Affordable Care Act in court, instead arguing that the ACA's protections for people with pre-existing conditions should be invalidated. Two career DOJ attorneys withdrew from the case rather than sign DOJ's brief, and one of these attorneys resigned.

- a. Was it appropriate for the Justice Department to change its previous litigation position and decline to continue defending the constitutionality of the Affordable Care Act?

RESPONSE: (b) (5)

- b. Did you agree with that decision?

RESPONSE: (b) (5)

- c. Will you review the Department's decision if you are confirmed?

RESPONSE: (b) (5)

- d. You have previously argued in an amicus brief that the Affordable Care Act is unconstitutional. Do you still hold that view?

RESPONSE: (b) (5)

53. You have described Attorney General Sessions as "an outstanding attorney general" in your November 2018 *Washington Post* op-ed. Please identify any actions or policies that Attorney General Sessions implemented during his tenure that you think were misguided and that should be revisited by the next Attorney General.

RESPONSE: (b) (5)

54. In order to reduce the number of shootings in Chicago, we must address the flow of illicitly-trafficked guns from out-of-state into the city.

- a. Will you commit that, if you are confirmed, you will make it a priority of the Department of Justice to investigate and prosecute those who are selling guns that supply Chicago's criminal gun market?

RESPONSE: (b) (5)

- b. If you are confirmed, what steps will you take to ensure that cases involving straw purchasing, gun trafficking, and dealing in firearms without a license are prosecuted?

RESPONSE: (b) (5)

- c. Will the Department of Justice's budget requests support additional resources, specifically for ATF, to enforce these laws?

RESPONSE: (b) (5)

- d. If confirmed as Attorney General, would you take steps to enable and encourage all state and local law enforcement agencies to use eTrace and NIBIN for all guns and ammunition casings recovered in crimes?

RESPONSE: (b) (5)

55. There is an important program in the Justice Department's Office of Justice Programs called the John R. Justice Program. Named after the late former president of the National District Attorneys Association, the John R. Justice Program provides student loan repayment assistance to state and local prosecutors and public defenders across the nation

Congress created this program in 2008 and modeled it after a student loan program that DOJ runs for its own attorneys. The John R. Justice program helps state and local prosecutors and defenders pay down their student loans in exchange for a three-year commitment to their job. This is a very effective recruitment and retention tool for prosecutor and defender offices. And since DOJ is giving hundreds of millions of dollars in grants each year to state and local law enforcement, which generates more arrests and more criminal cases, it is critical that we help prosecutor and defender offices keep experienced attorneys on staff to handle these cases.

The John R. Justice Program has helped thousands of prosecutors and defenders across the country. But for the program to remain successful, the Department of Justice must remain committed to funding this program and to carefully administering it.

Will you commit to support this program during your tenure if you are confirmed?

RESPONSE: (b) (5)

56. In your 1991 confirmation hearing you were asked by Senator Thurmond about the pace of filling judicial vacancies while you were Deputy Attorney General. You said "it is a long process because we have to make sure that we are putting people who have the proper character and integrity and competence on the bench, and that requires the FBI background check, it requires the ABA screening process, and that takes a lot of time."

- a. Is it still your view that the ABA screening process is required to ensure that judicial nominees have the proper character, integrity and competence to serve on the bench?

RESPONSE: (b) (5)

- b. If so, will you commit to doing all in DOJ's power to ensure that the Committee has the benefit of the results of the ABA screening process before the Committee holds a hearing on a judicial nominee?

RESPONSE: (b) (5)

- 57. Will you commit that, if you are confirmed, you will take steps to ensure that the FBI and the Department of Justice work together to improve hate crime reporting by state and local law enforcement?

RESPONSE: (b) (5)

- 58. When I was Chairman of the Subcommittee on the Constitution, Civil Rights, and Human Rights, I held two hearings on the human rights, fiscal, and public safety consequences of solitary confinement. Anyone who heard the chilling testimony of Anthony Graves and Damon Thibodeaux—exonerated inmates who each spent more than a decade in solitary confinement—knows that this is a critical human rights issue that we must address.

In light of the mounting evidence of the harmful—even dangerous—impacts of solitary confinement, states around the country have led the way in reassessing the practice. Some progress was made at the federal level as well; however, much of the progress has been erased during the Trump Administration, and there are currently more than 11,000 federal inmates in segregation.

- a. Do you believe that long-term solitary confinement can have a harmful impact on inmates?

RESPONSE: (b) (5)

- b. If you are confirmed, can you assure me that you will examine the evidence and work with BOP to make ensure that solitary confinement is not overused?

RESPONSE: (b) (5)

- 59. When asked at your hearing about the Foreign Emoluments Clause to the Constitution, you said “I cannot even tell you what it says at this point.”

The Foreign Emoluments Clause in Art. I, Section 9, Clause 8 of the Constitution states that “No Title of Nobility shall be granted by the United States; and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”

The Foreign Emoluments Clause reflects a fundamental priority of the Founding Fathers as they designed our form of government. They were worried about foreign powers attempting to influence and corrupt the leadership of our nation, so the Constitution included safeguards against pressure from such powers, particularly the Foreign

Emoluments Clause, which was adopted unanimously at the Constitutional Convention. As Delegate Edmund Randolph of the Continental Congress said during the ratification debates in Virginia, “[i]t was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.”

- a. Do you believe that all current provisions of the Constitution must be followed and enforced, including the Foreign Emoluments Clause?

RESPONSE: (b) (5)

- b. If you are confirmed as Attorney General, what steps will you take to ensure that the Foreign Emoluments Clause is followed and enforced?

RESPONSE: (b) (5)

60.

- a. In an April 5, 2001 interview, conducted in connection with the preparation of an oral history of the presidency of George H.W. Bush, you called the *qui tam* provisions of the False Claims Act “an abomination and a violation of the Appointments Clause under the due powers of the President. . . .” At your hearing you said you no longer consider the False Claims Act an abomination. What changed your mind?

RESPONSE: (b) (5)

- b. In 2000, the year before your April 5, 2001 interview, the Supreme Court made it clear in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*--a decision authored by Justice Scalia--that *qui tam* relators have Article III standing to bring False Claims Act cases on behalf of the government. Do you think this case was wrongly decided?

RESPONSE: (b) (5)

- c. If you are confirmed, will you commit to vigorously enforcing the False Claims Act and its *qui tam* provisions?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR WHITEHOUSE

1. In October 1973, during the Watergate scandal, President Nixon ordered the firing of independent special prosecutor Archibald Cox, who was investigating Nixon's role in the scandal. Then-Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus refused to fire Cox and resigned in protest, but the next in command, Robert Bork, was willing to carry out the firing. This was the infamous Saturday Night Massacre, and the American people were rightly outraged by this attack on the rule of law. In the aftermath of that event, largely in response to that public outrage, acting Attorney General Bork agreed to enter into a written delegation agreement to ensure the independence of Cox's successor, Leon Jaworski. The Bork order contained much stronger provisions to protect the independence of the special prosecutor investigation than is now found in the Department of Justice guidelines that govern the Mueller inquiry. These included (1) protections against termination without cause; (2) limitations on the day-to-day supervision of and interference with the investigation, including with respect to the scope of the investigation; (3) assurances that the special prosecutor would have access to all necessary resources; and (4) assurances that the special prosecutor be permitted to communicate to the public and submit a final report to appropriate entities of Congress and make such a report public.

At your nomination hearing, you pledged a number of protections for the special counsel. Reviewing the Bork order, please identify any areas in which you intend to provide less protection or independence to the Special Counsel than was provided therein.

RESPONSE: (b) (5)

2. Will you object to Special Counsel Mueller testifying publicly before Congress if invited (or subpoenaed)?

RESPONSE: (b) (5)

3. Under the Special Counsel regulations, "at the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel." Subject to any claims of privilege, will you commit to producing the Special Counsel's concluding report in response to a duly issued subpoena from the Judiciary Committee of either the House or Senate?

RESPONSE: (b) (5)

4. Referring to former FBI Director Comey's conduct in the lead-up to the 2016 election, you testified that "if you are not going to indict someone, then you do not stand up there and unload negative information about the person. That is not the way the Department of Justice does business." As I told you during our private meeting, when it comes to ordinary prosecutorial decisions, I wholeheartedly agree. How does that general principle apply to the required report of the Special Counsel?
 - a. Is it your view that DOJ regulations, policy, and practice forbid public discussion of wrongdoing whenever the Department of Justice has declined to seek indictments related to such wrongdoing? Are there any differences in how those regulations, policies, and practice govern a Special Counsel report?

RESPONSE: (b) (5)

- b. Is it your view that DOJ regulations, policy, and practice also forbid the indictment of a sitting president? If so, how can the policy obtain Article III review so that a court may "say what the law is"? Should OLC be the final arbiter of this controversial question?

RESPONSE: (b) (5)

- c. What if there are grounds to indict and the sole reason for declination is the current DOJ policy against indicting a sitting president?

RESPONSE: (b) (5)

- d. Should derogatory information against an uncharged president or other official subject to impeachment be provided to Congress? How is Congress to exercise its constitutional rights and carry out its constitutional obligations if such information is shielded?

RESPONSE: (b) (5)

- e. Should we interpret your statements at the hearing that (1) derogatory information against an uncharged individual should not be disclosed and (2) a sitting president cannot be indicted to mean that you would not release to Congress any contents of the Mueller report that contain negative information about President Trump? If we should not, why not?

RESPONSE: (b) (5)

- f. If the Mueller investigation uncovers evidence of criminality by the President, but DOJ declines to prosecute solely on the basis of the OLC memo prohibiting

indictment of a sitting president, and DOJ policy meanwhile prohibits the disclosure of derogatory information about an uncharged individual, will you keep from Congress and the American people evidence that the President may have committed criminal acts?

RESPONSE: (b) (5)

- g. With respect to OLC's conclusion that the president cannot be indicted under any circumstances while in office, is there any other person in the country who similarly cannot be indicted under any circumstances?

RESPONSE: (b) (5)

- h. Do the public and Congress have a significant interest in facts indicating criminal wrongdoing by the President of the United States while in office?

RESPONSE: (b) (5)

- i. Do you agree that Congress has a constitutional responsibility to investigate and prosecute a President for high crimes and misdemeanors when warranted?

RESPONSE: (b) (5)

- j. Do you agree that, in order to carry out its constitutional responsibilities, Congress should be made aware by the executive branch of conduct potentially constituting high crimes and misdemeanors?

RESPONSE: (b) (5)

5. Please describe the nature of your relationship with White House Counsel Pat Cipollone, including any shared organizational affiliations.

RESPONSE: (b) (5)

6. Deputy White House Counsel John Eisenberg, a former partner at your law firm Kirkland & Ellis, received a broad ethics waiver allowing him to "participate in communications and meetings where [Kirkland] represents parties in matters affecting public policy issues which are important to the priorities of the administration." What

discussions, if any, have you had with Deputy Counsel Eisenberg since he received that waiver? Please identify any specific matter and/or client discussed, and the details of any such discussion.

RESPONSE: (b) (5)

7. In your nomination hearing, you told me you would commit to complying with the existing DOJ policy limiting contacts between the White House and the DOJ regarding pending criminal matters, and would perhaps tighten those restrictions.
- a. Will you reaffirm that commitment?

RESPONSE: (b) (5)

- b. In what circumstances would it be appropriate for you, if confirmed as AG, to discuss a pending criminal matter with the White House?

RESPONSE: (b) (5)

- c. What is the goal of restrictions on communications between DOJ and the White House regarding ongoing investigations and prosecutions?

RESPONSE: (b) (5)

8. On February 14, 2018, the Washington Post reported that then-White House counsel Donald McGahn made a call in April 2017 to Acting Deputy Attorney General Dana Boente in an effort to persuade the FBI director to announce that Trump was not personally under investigation in the probe of Russian interference in the 2016 election.

On September 13, 2017, White House Press Secretary Sarah Huckabee Sanders suggested from the Press Secretary podium that the Department of Justice prosecute Former FBI Director James Comey.

On December 2018, CNN reported that President Trump “lashed out” at Acting Attorney General Whitaker on at least two occasions because he was angry about the actions of federal prosecutors in the Southern District of New York in the Michael Cohen case, in which SDNY directly implicated the president – or “Individual 1” – in criminal wrongdoing. According to reports, Trump pressed Whitaker on why more wasn't being done to control the prosecutors who brought the charges in the first place, suggesting they were going rogue.

Assuming these reports are accurate, did each of these contacts comply with the governing policy limiting DOJ-White House contacts regarding pending criminal matters, and would you permit them under your contacts rule?

RESPONSE: (b) (5)

9. On January 3, 2019, CNN reported that Acting Attorney General Whitaker spoke in private with former Attorney General and Federalist Society co-founder Edwin Meese, who is now a private citizen. During that meeting, Whitaker reportedly told Meese that the U.S. Attorney in Utah is continuing to investigate allegations that the FBI abused its powers in surveilling a former Trump campaign adviser and should have done more to investigate the Clinton Foundation.

a. Do those communications seem proper to you?

RESPONSE: (b) (5)

b. Under what circumstances would you allow officials of the Department to discuss a pending DOJ criminal investigation with a non-witness private citizen?

RESPONSE: (b) (5)

10. Do you believe that the Presidential Communications Privilege extends to the President's communications with the Attorney General?

a. Are you bound by the D.C. Circuit holding that "the [Presidential Communications] privilege should not extend to staff outside the White House in executive branch agencies"? *In re Sealed Case (Espy)*, 121 F.3d 729 (D.C. Cir. 1997).

RESPONSE: (b) (5)

b. Under what circumstances would you fail to abide by the limitations on the Presidential Communications Privilege set forth in *In re Sealed Case (Espy)*?

RESPONSE: (b) (5)

11. In our one-on-one meeting, you told me you would "not support the assertion of executive privilege if [you] concluded that it was designed to cover up a crime."

a. To be clear, would you support the assertion of executive privilege if asserted to cover up a crime?

RESPONSE: (b) (5)

b. Would you support the assertion of executive privilege in order to cover up facts that amount to a chargeable crime but for the fact that the subject cannot under DOJ/OLC policy be indicted?

RESPONSE: (b) (5)

- c. If you conclude that the president is asserting executive privilege over, for example, evidence in the Mueller report in order to cover up a crime, what specifically would you do to stop it?

RESPONSE: (b) (5)

- d. If an assertion of executive privilege is invalid as asserted to cover up a crime, is there any reason Congress should not be informed to accomplish its constitutional duties of oversight and/or impeachment?

RESPONSE: (b) (5)

- e. If you conclude that the president has claimed executive privilege in order to cover up evidence of a crime over your objection, would you inform Congress about your conclusion?

RESPONSE: (b) (5)

- 12. During the confirmation proceedings for Justice Kavanaugh, the Trump administration withheld tens of thousands of pages of relevant documents on the vague ground of “constitutional privilege.” Because the Judiciary Committee Chairman did not challenge that assertion, the administration never had to defend it. The administration also failed to produce a privilege log, which would have allowed us to understand the nature of the documents over which the administration was asserting privilege.

- a. If the president seeks to withhold information from Congress on grounds of privilege, will you commit to producing a privilege log that identifies, at a minimum, the participants/custodians of the document/exchange, as well as the basis for the privilege assertion (presidential communication, deliberative process, attorney-client, etc.)? If not, why not?

RESPONSE: (b) (5)

- 13. Do you believe the President or DOJ can withhold information from Congress without a formal assertion of executive privilege, beyond the time nominally necessary for review and decision as to whether the president shall assert the privilege?

RESPONSE: (b) (5)

- 14. Our committee has not received answers to questions for the record submitted to Attorney General Sessions after the DOJ Oversight hearing in October 2017. Over a year has passed since then.

- a. Do you think it is acceptable that DOJ has failed to respond to these

oversight questions?

RESPONSE: (b) (5)

- b. Will you commit to providing answers to those outstanding questions by March 1, 2019? If not, why not? And by when will you commit to answering them?

RESPONSE: (b) (5)

15. Will you commit to providing timely answers to questions for the record submitted in connection with future DOJ oversight hearings? What specific time frame will you commit to?

RESPONSE: (b) (5)

16. Will you commit to responding to oversight requests submitted by the minority party?

RESPONSE: (b) (5)

17. Under what circumstances do you think it would be appropriate for DOJ to take longer than six months to respond to an oversight request?

RESPONSE: (b) (5)

18. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position in the Trump White House? With whom? When? What was the substance of the conversation?

- a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?

RESPONSE: (b) (5)

19. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position on the President's personal legal team? With whom? When? What was the substance of the conversation?

- a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?

RESPONSE: (b) (5)

20. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position in the Department of Justice? With whom? When? What was the substance of the

conversation?

- a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?

RESPONSE: (b) (5)

21. On June 8, 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel titled "Mueller's 'Obstruction' Theory," in which you wrote that Special Counsel Mueller's "obstruction theory is fatally misconceived." You also stated your memo was unsolicited.

Please provide a full accounting of the preparation of that memo including:

- a. Why did you submit an unsolicited memo about a pending investigation to the Department of Justice?
- b. Why did you think your opinion was relevant if, as you acknowledged, you were "in the dark about many facts"?
- c. How did you know what Mueller's obstruction theory was? With whom did you discuss that before you drafted your memo?
- d. At your confirmation hearing, you stated that you were "speculating" about Mr. Mueller's interpretation of 18 U.S.C. § 1512. How did you know Mueller was contemplating a case under Section 1512? Did anyone tell you this? If so, who?
- e. Please list all persons with whom you had communications related to the memo before June 8, particularly any person at the Trump White House, on President Trump's legal team, in the Department of Justice, or among Republican House committee members or staff?
- f. Please list all persons with whom you had communications related to the memo on or after June 8, particularly any person at the Trump White House, on President Trump's legal team, in the Department of Justice, or among Republican House committee members or staff?
- g. Did you discuss the memo before June 8 with any person currently or formerly associated with the Federalist Society? If so, who?
- h. Did you receive assistance from anyone in writing or researching your memo?
- i. Who paid you for the time it took you to write and research this memo?
- j. How was the memo transmitted to the Department of Justice? Were there emails or other cover documents associated with its transmission? **If so, please attach these to your answer.**

- k. Discussing your memo, Rod Rosenstein was quoted in a December 20, 2018, *Politico* article as saying: “I didn’t share any confidential information with Mr. Barr. He never requested that we provide any non-public information to him, and that memo had no impact on our investigation.” Did you request that DOJ provide you any information about the Mueller investigation? If so, what did you request, from whom did you request it, and what was provided?

RESPONSE: (b) (5)

22. On the first page of your June 8 memo, while criticizing Mueller’s obstruction theory, you acknowledged that “[o]bviously, the President and any other official can commit obstruction in this classic sense of sabotaging a proceeding’s truth-finding function. Thus, for example, if a President knowingly destroys or alters evidence, suborns perjury, or induces a witness to change testimony, or commits any act deliberately impairing the integrity or availability of evidence, then he, like anyone else, commits the crime of obstruction.”
- a. You’ve stated that you believe the OLC opinion that a sitting president cannot be indicted is correct. If that is the case, what would you do if the Mueller investigation presented you with evidence that led you to conclude President Trump had committed obstruction of justice in, as you say, the “classic sense”? How about treason?

RESPONSE: (b) (5)

23. During your nomination hearing, as in your June 8 memo, you raised a point about the meaning of the word “corruptly” in the federal corruption statutes. You argued that “Mueller offers no definition of what ‘corruptly’ means,” and that “people do not understand what the word ‘corruptly’ means in that statute [18 U.S.C § 1512(c)]. It is an adverb, and it is not meant to mean with a state of mind. It is actually meant the way in which the influence or obstruction is committed. . . . [I]t is meant to influence in a way that changes something that is good and fit to something that is bad and unfit, namely the corruption of evidence or the corruption of a decisionmaker.” Later, you cited *United States v. Poindexter*, 951 F.2d 369, 379 (D.C. Cir. 1991) as having the “most intelligent discussion of the word ‘corruptly.’”
- a. How did Congress’s passage of the False Statements Accountability Act of 1996, as codified in 18 U.S.C § 1505, affect the *Poindexter* ruling? That Act provides that the term “‘corruptly’ means ‘acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.’”
- b. While the False Statements Accountability Act of 1996, on its face, applies only to Section 1505, the legislative history makes clear that the bill’s goal was to align the construction of “corruptly” in Section 1505 with interpretation of that term in the other obstruction statutes, including 18 U.S.C. § 1512. For example, Senator Levin, one of the bill’s sponsors, said that the bill would “bring [Section 1505]

back into line with other obstruction statutes protecting government inquiries.” Do you believe that the meaning of the term “corruptly” in Section 1512 should be different from the meaning of that identical term in Section 1505?

- c. It is now the consensus view among courts of appeals and the position of the Department of Justice that the term “corruptly,” including in 18 U.S.C. § 1512(c), means motivated by an “improper purpose.”¹ Will you abide by that consensus position? Given the specific definition of “corruptly” set forth in the False Statements Accountability Act of 1996, what is now “very hard to discern” about the meaning of the term “corruptly” as used in the federal obstruction statutes? If confirmed, will you apply the definition of “corruptly” set forth in the False Statements Accountability Act of 1996 in enforcing the federal obstruction of justice statutes, including Section 1512(c)? If not, why not?
- d. Your June 8 memo includes no reference to the False Statements Accountability Act of 1996 or its definition of “corruptly.” Why?

RESPONSE: (b) (5)

24. On May 12, 2017, you published an op-ed in the Washington Post defending President Trump’s firing of FBI Director James Comey.
- a. Did anyone ask you to write that op-ed, or suggest that you write it? If so, who?
 - b. Did you have any communications related to the op-ed with any person at the Trump White House, President Trump’s legal team, the Department of Justice, or Republican House committee members or staff?
 - c. Did you discuss the op-ed before its publication with any person currently or formerly associated with the Federalist Society?
 - d. Did you share any draft of your op-ed with any person prior to sending it to the Department of Justice? If so, with whom?

RESPONSE: (b) (5)

¹ *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (“Acting ‘corruptly’ within the meaning of § 1512(c)(2) means acting with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct . . .” (internal quotation marks omitted)); *United States v. Mintmire*, 507 F.3d 1273, 1289 (11th Cir. 2007) (“‘corruptly’ as used in Section 1512(c)(2) means ‘with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct’ an official proceeding); *United States v. Arthur Andersen LLP*, 374 F.3d 281, 296 (5th Cir. 2004) (“Under the caselaw, ‘corruptly’ requires an improper purpose” (emphasis in original)), *rev’d and remanded on other grounds*, 544 U.S. 696 (2005); *United States v. Thompson*, 76 F.3d 442, 452 (2d Cir. 1996) (noting that “we have interpreted the term ‘corruptly,’ as it appears in § 1503, to mean motivated by an improper purpose,” and extending that interpretation to Section 1512); *Brown v. United States*, 89 A.3d 98, 104 (D.C. 2014) (“individuals act ‘corruptly’ when they are ‘motivated by an improper purpose’”).

25. During your nomination hearing, I outlined for you my concern with Matthew Whitaker's (and other Trump appointees') failure to identify the sources of funding behind payments received for partisan activities before his appointment. Since 2015, Mr. Whitaker has received more than \$1.2 million in compensation from FACT, a 501(c)(3) organization promoting "accountability" from public officials. Between 2014 and 2016, FACT received virtually all of its funding—approximately \$2.45 million— from a donor-advised fund called DonorsTrust. DonorsTrust has been described as "the dark-money ATM for the right," which "allows wealthy contributors who want to donate millions to the most important causes on the right to do so anonymously, essentially scrubbing the identity of those underwriting conservative and libertarian organizations." During and after his tenure at FACT, the organization has filed at least fourteen complaints and requests for investigations with the Department of Justice, the Internal Revenue Service, and the Federal Election Commission against Secretary of State Hillary Clinton, various Democratic members of Congress, Democratic Party leaders, and Democratic candidates.

- a. How can DOJ recusal and conflict of interest policies be effective if appointees fail to disclose true identities in funding, payments they have received, or political contributions or solicitations they have made, as part of their financial disclosures in the ethics review process?

RESPONSE: (b) (5)

- b. Where it appears that someone has made efforts to hide their identity, should ethics review make efforts to determine who the real party in interest is behind those efforts to hide their identity?

RESPONSE: (b) (5)

26. In your SJQ Questionnaire, you wrote "In the event of a potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations." Unlike many other nominees, including AG Sessions, you did not say you would follow ethics officials' recommendations with respect to conflicts of interest. You confirmed at your confirmation hearing that you would not "surrender" your authority to make the ultimate determination.

- a. Have you already concluded whether you should be recused from the Mueller investigation if confirmed?

RESPONSE: (b) (5)

- b. Given that, as a private citizen, you gave unsolicited advice directly to the President's legal team and to DOJ casting doubt on aspects of the Mueller investigation, do you understand public concern about your unwillingness either to agree to recuse from that investigation, or to follow the recusal guidance of career DOJ ethics officials, as past attorneys general have generally done?

RESPONSE: (b) (5)

- c. If you determine you will not comply with the recusal guidance of DOJ ethics officials, will you publicly explain your decision?

RESPONSE: (b) (5)

27. This month, my Judiciary Committee colleagues and I requested that OIG investigate the circumstances surrounding Acting AG Whitaker's refusal to comply with guidance from career DOJ ethics officials. Will you interfere with OIG's procedures concerning that requested investigation?

RESPONSE: (b) (5)

28. Please explain the commitments you made during the hearing to Chairman Graham that you will conduct DOJ investigations on specific issues he identified. Had you agreed with him in advance that the matters he raised should be investigated?

RESPONSE: (b) (5)

29. What weight will you give the ethics advice of career DOJ officials regarding recusal and conflicts of interest? What explanations will you commit to provide in cases where you choose not to follow their advice?

RESPONSE: (b) (5)

30. During your testimony, you described conversations you have had with Deputy Attorney General Rod Rosenstein about the terms and timing of his departure from DOJ if you are confirmed. Have you had any conversations with Matthew Whitaker about his future at DOJ if you are confirmed? If so, please describe those conversations, noting specifically whether you know whether Mr. Whitaker will remain at DOJ and in what role. If not, why haven't you spoken with him as you have with Mr. Rosenstein?

RESPONSE: (b) (5)

31. In our one-on-one meeting, you told me you would commit to ensuring that lawyers at DOJ, and at OLC specifically, would be held to the highest legal ethical standards, including a duty of candor. Will you reaffirm that commitment? How specifically will you implement it?

RESPONSE: (b) (5)

32. This month, the Washington Post published an op-ed by a former OLC attorney who acknowledged that under the Trump Administration, OLC lawyers have advanced pretextual arguments to defend Trump’s policies.² She identified OLC’s traditional deference to White House factual findings as the biggest problem under Trump, and said that she saw “again and again how the decision to trust the president failed the office’s attorneys, the Justice Department and the American people.” She wrote that OLC routinely failed to look closely at claims the president makes, and that if a lawyer identified “a claim by the president that was provably false, [they] would ask the White House to supply a fig leaf of supporting evidence.”

- a. Do you have any reason to doubt the allegations and admissions made in the Post op-ed?

RESPONSE: (b) (5)

- b. Is the OLC conduct described in the op-ed consistent with a lawyer’s duty of candor?

RESPONSE: (b) (5)

- c. How will you address the issue of deference to White House “fact-finding” given a president who, according to fact checkers, has lied more than 8,100 times since he took office?³

RESPONSE: (b) (5)

- d. Against that backdrop, under your leadership, will the Department continue its traditional practice of deferring to factual findings by the White House?

RESPONSE: (b) (5)

- e. Do you agree that the Post op-ed raises serious concerns about the possibility that OLC is complicit in creating pretextual justifications for proposed administration actions?

RESPONSE: (b) (5)

- f. If confirmed, what will you do to address these concerns?

RESPONSE: (b) (5)

33. Social welfare groups, organized under Section 501(c)(4) of the Tax Code, are

² https://www.washingtonpost.com/opinions/i-worked-in-the-justice-department-i-hope-its-lawyers-wont-give-trump-an-alibi/2019/01/10/9b53c662-1501-11e9-b6ad-9cfd62dbb0a8_story.html?utm_term=.b4a7e24ff5da

³ https://www.washingtonpost.com/politics/2019/01/21/president-trump-made-false-or-misleading-claims-his-first-two-years/?utm_term=.34e802aaa8b7

required to report political spending to the Federal Election Commission (FEC). Social welfare organizations are also required to file reports with the Internal Revenue Service (IRS), detailing the groups' actual or expected political activity.

- Question 15 on IRS Form 1024 (application for recognition of tax exemption) asks, "Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office . . . ?"
- Question 3 on IRS Form 990 (annual return of exempt organization) asks, "Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If 'Yes,' complete Schedule C, Part I."

Both IRS Forms 1024 and 990 are signed under penalty of perjury. Section 1001 of the criminal code, makes it a criminal offense to make "any materially false, fictitious or fraudulent statement or representation" in official business with the government; and Section 7206 of the Internal Revenue Code, makes it a crime to willfully make a false material statement on a tax document filed under penalty of perjury. In your view, if an organization files inconsistent statements regarding their political activity with the FEC and the IRS, can the group be liable under Section 1101 or 7206?

RESPONSE: (b) (5) Per CRM

[REDACTED]

- a. Should the Department concern itself with such inconsistent statements of which the Department of Justice becomes aware? Could that inconsistency provide predication for further investigation?

RESPONSE: (b) (5) Per CRM

[REDACTED]

34. Currently no jurisdiction in the United States requires shell companies to disclose their beneficial ownership. Terror organizations, drug cartels, human traffickers, and other criminal enterprises abuse this gap in incorporation law to establish shell companies designed to hide assets and launder money. At a February 2018 Judiciary hearing, the M. Kendall Day, the then-Acting Deputy Assistant Attorney General for the Criminal Division, testified, "The pervasive use of front companies, shell companies, nominees, or other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country's AML [anti-money laundering] regime." The law enforcement community, including the Fraternal Order of Police, Federal Law Enforcement Officers Association; National Association of Assistant U.S. Attorneys;

and National District Attorneys Association, have all called on Congress to pass legislation to help law enforcement identify the beneficial owners behind these shell companies.

- a. Do you agree that allowing law enforcement to obtain the identities of the beneficial owners of shell companies would help law enforcement to uncover and dismantle criminal networks?

RESPONSE: (b) (5) Per CRM

- b. In July 2018, Treasury Secretary Mnuchin told the House Financial Services committee that “We’ve got to figure out this beneficial ownership [issue] in the next six months.” The Trump administration, however, has yet to endorse any beneficial ownership legislation introduced in Congress and has not put forth a proposal of its own. Will you commit to working with Congress and other relevant executive branch departments on legislation to give law enforcement the tools needed to more effectively untangle the complex web of shell companies criminals use to hide assets and launder money in the United States?

RESPONSE: (b) (5) Per CRM

- c. Under current law, banks are required to undertake due diligence to ensure that their customers are not laundering funds. No similar anti-money-laundering standards apply to the attorneys who help set up the shell companies integral to criminal enterprises. Do you support extending anti-money-laundering due diligence requirements to attorneys?

RESPONSE: (b) (5) Per CRM

35. Please describe the nature of your involvement with the Federalist Society, including your participation in any public or private events or meetings.

RESPONSE: (b) (5)

36. Please describe the nature of your relationship with Leonard Leo, including any shared organizational affiliations beyond the Federalist Society.

RESPONSE: (b) (5)

37. Have you been involved in any way, formally or informally, with the selection, recommendation, or vetting of judicial nominees during the Trump administration, including Justice Kavanaugh? Please describe with specificity the nature of any such involvement, including the names of any judicial nominees on whose nominations you worked.

RESPONSE: (b) (5)

38. In 2017, the FBI concluded that white supremacists killed more Americans from 2000 to 2016 than “any other domestic extremist movement.” According to the FBI, law enforcement agencies reported that 7,175 hate crimes occurred in 2017, a 17 percent increase over the previous year. In a study titled “The Rise of Far-Right Extremism in the United States,” The Center for Strategic & International Studies found that terror attacks by right-wing extremists rose from around a dozen attacks a year from 2012-2016 to 31 in 2017. Meanwhile, the Trump administration has cut funding to programs, particularly the Department of Homeland Security’s Office of Community Partnership, designed to combat extremism and prevent people from joining extremist groups in the first case.
- a. You stated in your testimony that we must have a “zero tolerance policy” for people who “violently attack others because of their differences.” Please elaborate on the steps you plan to take at DOJ to combat the rise of hate crimes and right-wing extremism.
 - b. Is there value in using federal resources to prevent people from becoming radicalized?
 - c. What will you do if you feel the Trump administration is not devoting enough attention or resources to combatting domestic terrorism and right-wing extremism?
 - d. Would you support encouraging DOJ investigators and prosecutors to label all hate crimes meeting the federal definition of “domestic terrorism” so as to collect more accurate data about the number of violent hate crimes that occur around the country, particularly in states that do not have hate crimes laws?
 - e. Will you commit to treating hate crimes that meet the definition of “domestic terrorism” as a top priority given recent trends?

RESPONSE: (b) (5)

39. As you are aware, Congress just passed—and the President just signed—the most sweeping criminal justice reform in decades. On both the sentencing and prison side, the FIRST STEP Act incorporates reforms that would seem to go against your previously stated policy views. Will you commit to implement the law faithfully and to let us know if you hit roadblocks or challenges?

RESPONSE: (b) (5)

40. As you know, in May 2017 Attorney General Sessions issued a memorandum on “Department Charging and Sentencing Policy” directing federal prosecutors to “charge and pursue the most serious, readily provable offense.” During your hearing, you told Senator Lee that you intended to continue that policy “unless someone tells me a good reason not to.”
- a. Do you believe that the core policy of charging the most serious, readily provable offense promotes public safety? What data supports your response?

RESPONSE: (b) (5)

- b. Do you believe that the core policy of charging the most serious, readily provable offense leads to fair outcomes? What data supports your response?

RESPONSE: (b) (5)

- c. In a blog post about the Sessions charging policy, the Cato Institute opined that the most serious, readily provable offenses “are so rigid that they too often lead to injustice—especially in drug cases where the quantity of drugs can be the primary factor instead of a person’s culpability. Low-level mules get severe sentences for example driving narcotics from one city to another.” Would this be a “good reason not to” continue the policy?

RESPONSE: (b) (5)

- d. If you do intend to continue the Sessions charging policy, is it your intent that the policy apply to white collar, financial crimes as well as to drug-related and violent crimes?

RESPONSE: (b) (5)

41. Shortly before leaving office, Attorney General Sessions issued a memorandum sharply curtailing the use of consent decrees between the Justice Department and local governments. According to the memo, Sessions imposed three stringent requirements for the agreements: (1) Top political appointees must sign off on the deals, rather than the career lawyers who have done so in the past; (2) Department lawyers must present evidence of additional violations beyond unconstitutional behavior; and (3) the agreements must have a sunset date, rather than being in place until police or other law enforcement agencies have shown improvement.
- a. Is it your intent to continue the Sessions policy on consent decrees? Why or why not?

RESPONSE: (b) (5)

- b. If you intend to continue the Sessions policy, why is it good policy for

political appointees rather than career prosecutors to sign off on these agreements?

RESPONSE: (b) (5)

- c. You told Senator Hirono that the notion that the Sessions policy made it “tougher” for DOJ to enter into consent decrees was her characterization of the policy. Based on the three new requirements, do you not agree that the Sessions policy makes it tougher for DOJ to enter into consent decrees?

RESPONSE: (b) (5)

42. In your April 2001 interview for the George H.W. Bush Oral History Project you indicated that the DOJ will/should defend the constitutionality of congressional enactments except when a statute impinges on executive prerogative.

- a. Do you still hold this belief? If so, what is an example of a statute that you feel “impinges on executive prerogative” that you therefore would not defend?

RESPONSE: (b) (5)

- b. What is your view of the Department of Justice’s decision not to defend the Affordable Care Act against the challenge brought by several states in federal district court in Texas?

RESPONSE: (b) (5)

43. Do you believe that voter impersonation is a widespread problem? If so, what is the empirical basis for that belief?

RESPONSE: (b) (5)

44. As Attorney General, in the aftermath of the *Shelby County v. Holder* decision, how specifically would you use the Department of Justice to protect racial and language minority voters from discriminatory voting laws? Can you provide an example of a case in which you believe Section 2 of the Voting Rights Act was used effectively?

RESPONSE: (b) (5)

45. In October, 2017, Attorney General Sessions issued a memo reversing federal government policy clarifying that discrimination against transgender people is sex discrimination and prohibited under federal law. The memo stated, among other things, that “Title VII’s prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender

identity per se, including transgender status.” As recently as October, 2018, DOJ filed a brief in the Supreme Court arguing that Title VII of the Civil Rights Act of 1964 does not prohibit discrimination against transgender workers.

- a. Do you agree with Attorney General Sessions’s interpretation of Title VII? Why or why not?

RESPONSE: (b) (5)

- b. Should you be confirmed as Attorney General, would DOJ continue to take the position that Title VII does not prohibit discrimination against transgender employees?

RESPONSE: (b) (5)

48. In a 1992 speech to the “In Defense of Civilization” conference, you called for “God’s law” to be brought to the United States. Reports said that you “blamed secularism for virtually every contemporary societal problem.” You said that secularism caused the country’s “moral decline,” and said that secularism caused “soaring juvenile crime, widespread drug addiction,” and “skyrocketing rates of venereal disease.”

- a. About a quarter of American adults today are not religious. Do you still think that those Americans are responsible for virtually every contemporary societal problem? If not, what changed your mind?

RESPONSE: (b) (5)

- b. Do you still believe that secularism causes juvenile crime and venereal disease? If not, what changed your mind?

RESPONSE: (b) (5)

49. Given your stated views on the evils of secularism, what commitments will you make to ensure that non-religious career attorneys and staff at the Department are protected against disparate treatment on the basis of their secularism?

RESPONSE: (b) (5)

50. In 2017, Attorney General Sessions wrote a memo on “Principles of Religious Liberty,” which primarily addressed instances like those presented by the Supreme Court’s *Masterpiece Cakeshop* case, where someone wants an exemption to anti-discrimination civil rights laws because they are discriminating for religious reasons. You co-authored an article in the Washington Post that praised Sessions’s memo on religious liberty. Last year, Sessions created a “Religious Liberty Task Force” to carry out the memo, but little is known about who is on that task force and what exactly they are doing to implement the memo.

- a. If confirmed, what will you do with the Religious Liberty Task Force? If you

decide to maintain the task force, will you commit making it transparent in terms of its membership and activities?

RESPONSE: (b) (5)

51. At your confirmation hearing, responding to questions about our anti-discrimination laws, you spoke about the need for accommodation to religious communities. How do you believe the law should strike a balance between the right of all people to be free from discrimination and the legitimate need to accommodate religious communities, to the extent those interests are sometimes in tension?

- a. Hypothetically, if a person had a sincerely held religious objection to hiring people of a certain race or gender, do you believe the First Amendment protects their right not to hire people on the basis of race or gender? Do you believe it should?

RESPONSE: (b) (5)

52. In 2017, Attorney General Sessions issued a memorandum implementing a ban on the practice of third party settlements.⁴ All too often, marginalized and disenfranchised communities bear the brunt of environmental harms caused by violations of federal clean air and water laws. Supplemental Environmental Projects, or “SEPs” included in DOJ settlements with polluters, have proved to be valuable mechanisms to accomplish environmental justice in these communities.

- a. Will you commit to ending the policy at DOJ of banning third party settlements in environmental enforcement cases?

RESPONSE: (b) (5)

53. DOJ under Attorney General Sessions saw a 90% reduction in corporate penalties during the first year of the Trump Administration, from \$51.5 billion to \$4.9 billion.⁵

- a. Will you commit to investigate this dramatic drop-off in corporate fines for violations of federal law and commit to reversing these trends?

RESPONSE: (b) (5)

54. As was noted at your confirmation hearing, the DOJ under the Trump administration has flipped its prior litigation positions in a number of high profile cases, many in the civil rights and voting rights arena.

- a. Are you concerned about the effect these reversals might have on the DOJ’s institutional credibility before the courts and the American

⁴ <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-third-party-settlement-practice>

⁵ Public Citizen 2018 report at 13 (see <https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf>).

people?

RESPONSE: (b) (5)

- b. Did DOJ reverse any prior litigation positions during your previous tenure as Attorney General?

RESPONSE: (b) (5)

- c. If confirmed, what process will you use to determine whether the Department should reverse a prior litigation position?

RESPONSE: (b) (5)

55. In March 2017, Caterpillar Inc. announced that it had retained you and the law firm Kirkland & Ellis to bring a “fresh look” to the ongoing criminal investigation into the company’s tax practices. Your work for Caterpillar began just weeks after agents with the Internal Revenue Service, U.S. Department of Commerce, and Federal Deposit Insurance Corp. executed search warrants at Caterpillar’s then headquarters and other facilities to seize documents related to Caterpillar’s tax strategy and international parts business. This criminal investigation followed a 2014 Senate Permanent Subcommittee on Investigations report criticizing Caterpillar’s tax practices, which allow the U.S.- based company to allocate significant profits to a low-tax Swiss subsidiary. The IRS has charged Caterpillar over \$2 billion in back taxes and penalties related to this matter.

- a. Will you commit to recusing yourself from any matters relating to Caterpillar?
- b. While representing Caterpillar, did you take any formal or informal actions to challenge the basis for the search warrants executed by the government or to challenge the documents collected during the search?

RESPONSE: (b) (5)

56. If confirmed as Attorney General, will you commit to providing the resources necessary to pursue complex criminal tax abuse investigations and prosecutions?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR KLOBUCHAR

1. During the hearing, you committed to consulting career ethics attorneys at the Department of Justice about whether to recuse yourself from overseeing the Special Counsel's investigation, although you did not commit to following their advice.

- a. Will you make public what the Department's ethics attorneys' recommendations are for any matter before the Department, including the Special Counsel's investigation?

RESPONSE: (b) (5)

- b. I asked whether attorneys at your law firm represented individuals or entities in connection with the Special Counsel's investigation. You told me that because you serve as Of Counsel at the firm, you would need to supplement your answer. Please do so here.

RESPONSE: (b) (5)

2. You have committed to make as much of the Special Counsel's report public as possible. Under 28 C.F.R. § 600.9(a)(3), the Attorney General must send a report to Congress documenting any instances where the Attorney General prohibited the Special Counsel from taking an action.

- a. Will you allow the White House or the President's personal lawyers to view or make changes to this report?

RESPONSE: (b) (5)

- b. Would Congress be within its rights to make some or all of this report public if the Department declined to do so?

RESPONSE: (b) (5)

3. I asked you whether the Department of Justice, under your leadership, would ever jail reporters for doing their job. You referenced the Department's guidelines and responded that jail might be appropriate as a last resort. Under Attorney General Sessions, the Department initiated a process to revise the guidelines, which has not been finalized.

- a. Do you believe that the guidelines need to be changed?

RESPONSE: (b) (5)

- b. The current guidelines require the Department to issue an annual report on all subpoenas issued or charges made against journalists. Will you commit to keeping this in place?

RESPONSE: (b) (5)

- c. Will you commit to keeping the Judiciary Committee informed of any proposed changes to the guidelines before they are finalized?

RESPONSE: (b) (5)

- 4. This Administration has reversed its positions in an unprecedented number of cases. I am concerned about the long-term effects of this on the Justice Department.

- a. Several career lawyers at the Department declined to sign the briefs in the Texas Affordable Care Act case. If you had been Attorney General, would you have directed the briefs to be filed over their objections?

RESPONSE: (b) (5)

- b. A former Office of Legal Counsel lawyer wrote an op-ed in *The Washington Post* in which she described her job as “fashioning a pretext, building an alibi” for the White House’s decisions. How will you restore morale among the Department’s career civil servants?

RESPONSE: (b) (5)

- 5. This Administration suggests that voter fraud is a major threat to the integrity of our elections, but a major *Washington Post* study found only 31 credible instances of voter fraud out of more than 1 billion votes cast over 14 years.

- a. Will you take an evidence-based approach to ensuring the integrity of our elections?

RESPONSE: (b) (5)

- b. Will you commit to enforcing Section 2 of the Voting Rights Act?

RESPONSE: (b) (5)

- 6. You and I had a lengthy talk about antitrust issues when we met, and I was glad to hear from you in our meeting that you are committed to renewed thinking about antitrust law.

- a. We have heard that the demands of merger enforcement have taken limited resources away from monopolization and other civil conduct cases. One of my bills, the Merger Enforcement Improvement Act, would see to it that the antitrust

agencies get the resources they need to tackle both mergers and monopolization cases. Can I count on your support in getting this bill passed and implemented?

RESPONSE: (b) (5)

- b. I am concerned about mergers that allow companies to unfairly lower prices that they pay, as buyer power among employers has been linked to stagnant wages. My bill, the Consolidation Prevention and Competition Promotion Act, would forbid these kinds of mergers under the Clayton Act. If you are confirmed, how will you approach the problems posed by monopsonies?

RESPONSE: (b) (5)

- c. I have expressed concern regarding the effectiveness of merger consent decrees in protecting competition and consumers. That is why my bill, the Merger Enforcement Improvements Act, would require parties to a consent decree to provide post-settlement data, so that the agencies can measure the effectiveness of their remedies and make improvements. Would post-settlement data be helpful in determining what types of merger remedies are effective and what types are not?

RESPONSE: (b) (5)

- d. It is clear that we are seeing trends toward increased vertical integration in certain industries, such as healthcare and video content. But after the challenge to the AT&T/Time Warner transaction was announced, a number of commentators characterized antitrust enforcement against a vertical merger as extremely rare, if not unprecedented. If you are confirmed, how will you evaluate the consequences of vertical integration in mergers?

RESPONSE: (b) (5)

- e. The vertical merger guidelines have not been revised for some time despite multiple calls for the Justice Department and FTC to update them and uncertainty as to the agencies' commitment to vertical merger enforcement. Will you commit to updating the vertical merger guidelines to reflect current Justice Department practices?

RESPONSE: (b) (5)

- f. Over the last decade, major online platforms have changed the lives of Americans, allowing them to find information, buy or sell products, and communicate with each other. At the same time, the growing dominance of these companies raises a host of potential antitrust issues, and the lack of competition among platforms appears to keep market forces from disciplining their approaches to consumer privacy. How will you assess the impact of technology platforms on competition?

RESPONSE: (b) (5)

- g. In the last two years, the European Commission has issued multi-billion dollar fines against Google for using its dominance in search to give advantages to other Google products and for using its strong position in Android-related markets to maintain its dominance in internet search. According to Assistant Attorney General Makan Delrahim, the European Union (EU) also uses the consumer welfare standard, so why are the levels of enforcement activity so different between the United States and the EU, and what steps will you take to reestablish U.S. leadership in antitrust law?

RESPONSE: (b) (5)

- h. Prescription drug costs impose a heavy burden on consumers and are projected to comprise an increasing proportion of health care costs in the years to come. Curbing pay-for-delay settlements is one way to reduce prescription drug costs, and Senator Grassley and I are leading legislation to help put a stop to these anti-consumer deals for years. If you are confirmed, how will you approach the role of antitrust law in reducing high prescription drug costs?

RESPONSE: (b) (5)

- i. Antitrust scholars have noted that the threat of private treble damages has driven the courts to constrain the Sherman Act's ability to address anticompetitive conduct by a single firm—which does not just affect private litigants, but government enforcement as well. Will you commit to reevaluating the positions that the Justice Department takes in private enforcement actions in order to expand the scope of enforcement of the antitrust laws?

RESPONSE: (b) (5)

- 7. In a November 1993 article in *The Banker*, you argued that the downsides of prosecuting corporations for fraud outweighed the upsides.
 - a. If you are confirmed, will you commit to prosecuting white collar and corporate criminals just as you would street criminals?

RESPONSE: (b) (5) Per CRM

[REDACTED]

- b. At a 2004 conference held by the Federalist Society, you said prosecutors in white-collar cases were young and inexperienced, and overreached in corporate investigations. If you are confirmed, those young prosecutors will be looking to you for leadership. Do you stand by what you said in 2004?

RESPONSE: (b) (5) Per CRM

- 8. According to a January 13, 2019 report in *The Washington Post*, the President has destroyed notes from at least one of his meetings with Russian President Vladimir Putin.

- a. Does the Presidential Records Act apply to the President?

RESPONSE: (b) (5)

- b. Do you believe that the Presidential Records Act is constitutional?

RESPONSE: (b) (5)

- 9. Attorney General Jeff Sessions narrowed the grounds for asylum claims for victims of private crime. His opinion in *Matter of A-B-* makes very difficult for victims of domestic abuse and gang violence to be granted asylum.

- a. Do you agree with Attorney General Sessions's decision in *Matter of A-B-*?

RESPONSE: (b) (5)

- b. Asylum statutes dictate that applicants seeking asylum must show that either their "race, religion, nationality, membership in a particular social group, or political opinion" is "at least one of the central reasons for the persecution" of the applicant. Do you interpret the statute's requirement of "membership in a particular social group" to be independent of the requirement that an applicant demonstrate persecution?

RESPONSE: (b) (5)

- 10. Minnesota has a large Liberian refugee population. In 2007, President George W. Bush directed that Deferred Enforced Departure (DED) be provided for 18 months to certain Liberians whose Temporary Protected Status (TPS) was expiring. Every President after George Bush has extended DED for Liberians since the initial 18 month period was set to expire. Last March, President Trump directed Secretary Nielson to begin winding down DED status. On March 31, 2019, DED ends for Liberians.

- a. Do you agree with President Trump's decision to end DED status?

RESPONSE: (b) (5)

- b. What steps will you take to protect Liberians with DED status from being deported?

RESPONSE: (b) (5)

- 11. One of my highest priorities has been working to combat the scourge of human trafficking. I work closely with members of the Judiciary Committee, including Senator Cornyn, to support survivors of human trafficking and provide resources to federal, state, and local law enforcement officials. We recently passed bipartisan legislation called the Abolish Human Trafficking Act.

- a. If confirmed as Attorney General, what will be your priorities in combating trafficking?

RESPONSE: (b) (5)

- 12. Congress will need to continue working with the Justice Department and local law enforcement officers combat the opioid epidemic.

- a. If confirmed as Attorney General, what steps will you take to combat the opioid epidemic?

RESPONSE: (b) (5)

- b. How do you plan to work with local law enforcement to combat the opioid epidemic?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR COONS

1. At your nomination hearing, you agreed to seek the advice of career ethics officials regarding whether you should recuse from the Special Counsel investigation. You testified that you did not think you would have an objection to (1) notifying the Senate Judiciary Committee once you receive the ethics officials' guidance, (2) telling the Committee what that guidance was, and (3) explaining whether or not you disagree with it. Now that you have had an opportunity to consult any applicable rules, will you agree to (1) notify this Committee once you receive the career ethics officials' guidance on recusal from the Special Counsel investigation, (2) inform us of the advice that you received from these career ethics officials, and (3) explain why you agree or disagree with it? If you contend that these notifications are not permitted, please cite the applicable rule.

RESPONSE: (b) (5)

2. At your nomination hearing, you testified that you would share as much as possible of Special Counsel Mueller's report "consistent with the regulations and the law."
 - a. Which regulations and laws do you think may prevent you from sharing the report in its entirety?

RESPONSE: (b) (5)

- b. If Special Counsel Mueller provides you with his report, and it contains information that you choose not to include in the Attorney General's report that is released to the public, would you provide a log of the information withheld and the rule, regulation, or privilege justifying that it be withheld?

RESPONSE: (b) (5)

3. If Donald Trump fires Special Counsel Mueller or orders you to fire Special Counsel Mueller without good cause, would you resign? Please answer yes or no.
 - a. If you would not resign, what would you do?

RESPONSE: (b) (5)

- b. Will you agree to notify the Chairman and Ranking Member of the Senate Judiciary Committee if you believe Special Counsel Mueller has been removed without good cause? Please answer yes or no.

RESPONSE: (b) (5)

- c. If you learn that the White House is attempting to interfere with the investigation, will you report that information to Special Counsel Mueller and inform Congress? Please provide examples of what, in your view, would constitute inappropriate interference.

RESPONSE: (b) (5)

4. If the President directed the FBI to stop investigating his National Security Advisor in order to hide the administration's Russia connections from the American people, is that illegal?

RESPONSE: (b) (5)

5. You were Attorney General when President Bush pardoned six administration officials charged with crimes in the Iran-Contra scandal, and you have said that you encouraged the President to issue those pardons. The Iran-Contra Independent Counsel called these pardons a "cover-up." He said they "undermine[] the principle that no man is above the law" and "demonstrate[] that powerful people with powerful allies can commit serious crimes in high office – deliberately abusing the public trust without consequence."
 - a. What factors would you consider when advising the President on whether to issue a pardon?
 - b. You testified that if a President issues a pardon as a quid pro quo to prevent incriminating testimony, that would be a crime. How should a President be held accountable for such a crime?
 - c. Would it be permissible for President Trump to pardon Michael Flynn, Paul Manafort, or Michael Cohen if he did so to cover up his own criminal activity?
 - d. Would it be permissible for President Trump to pardon himself?

RESPONSE: (b) (5)

6. Chairman Graham, Senator Tillis, Senator Booker, and I have introduced the Special Counsel Independence and Integrity Act (S.71), which would codify the good-cause restriction on the Special Counsel's removal and make it clear that the Special Counsel can be reinstated if he is removed improperly. If this bill passes, would you commit to complying with that law?

RESPONSE: (b) (5)

7. When you were nominated to lead the Office of Legal Counsel, you told the Senate Judiciary Committee that you “fully accepted” the Supreme Court’s ruling in *Morrison v. Olson*, 487 U.S. 654 (1988). Do you still accept the *Morrison* decision as good law?

RESPONSE: (b) (5)

8. Deputy Attorney General Rosenstein has said publicly that your June 2018 memorandum on obstruction of justice “had no impact” on the Special Counsel investigation. When I asked if you would order the Special Counsel’s office to accept and follow the reasoning in your memorandum, you testified that you would “try to work it out with Bob Mueller” and “unless something violates the established practice of the department, [you] would have no ability to overrule that.”
- a. Please confirm that if Special Counsel Mueller’s theory of obstruction does not violate an established practice of the Department of Justice, you will not overrule his interpretation of the law.
- b. Did any of the attorneys to whom you transmitted your June 2018 obstruction of justice memorandum respond to you? If so, please provide their responses.

RESPONSE: (b) (5)

9. The same day that you sent your June 2018 obstruction of justice memorandum to Deputy Attorney General Rosenstein, former Attorney General Dick Thornburgh, who was your boss when you were the Deputy Attorney General, authored an op-ed published in the *Washington Post*, stating in part, “Mueller is the right person to investigate Russia’s apparent assault on our democracy. . . . Mueller must put all applicable evidence before an impartial grand jury that will decide whether to bring charges. We must let him do his job.”
- a. Have you discussed your obstruction of justice memorandum with former Attorney General Thornburgh? If so, please describe this discussion.
- b. Have you discussed former Attorney General Thornburgh’s op-ed with him? If so, please describe this discussion.

RESPONSE: (b) (5)

10. In the 26 years since you served as Attorney General, have you sent any other legal memoranda to Department of Justice leadership criticizing an investigation? If so, please provide a list of the investigations that these memoranda addressed and estimates of when the memoranda were transmitted.

RESPONSE: (b) (5)

11. What is the remedy if the President violates his constitutional duty to faithfully execute the laws or violates an obstruction statute?

RESPONSE: (b) (5)

12. During the hearing on his nomination to be Attorney General, then-Senator Sessions stated that he “did not have communications with the Russians,” but facts about meetings that he had with the Russian Ambassador later became public. Have you ever had any contact and/or communications with anyone from the Russian government? If so, please list these contacts and/or communications.

RESPONSE: (b) (5)

13. An op-ed that you joined in November, entitled “We are former attorneys general. We salute Jeff Sessions,” specifically praised Attorney General Sessions for changing the Department of Justice’s interpretation of Title VII to exclude protections for transgender individuals. Do you support interpreting Title VII to protect the LGBT individuals?

RESPONSE: (b) (5)

14. In a 1995 law review article, you criticized a D.C. law that required Georgetown University to “treat homosexual activist groups like any other student group.” Do you oppose laws that ensure equal treatment for LGBT student groups?

RESPONSE: (b) (5)

15. At your nomination hearing, you testified that you are “against discrimination against anyone because of some status,” including “their gender or their sexual orientation.” If you are confirmed, will the Department of Justice file amicus briefs defending discrimination against LGBT individuals, as it did in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* and *Zarda v. Altitude Express*?

RESPONSE: (b) (5)

16. In a speech that you gave as Attorney General, you said that public schools had suffered a “moral lobotomy” based on “extremist notions of separation of church and state.” However, you testified at your nomination hearing that you “believe in the separation of church and state.” Do you think that the Constitution permits public schools to endorse a particular religious view?

RESPONSE: (b) (5)

17. You authored an op-ed that was published in the *Washington Post* claiming that President Trump’s first travel ban was legal and that it did not discriminate against Muslims. Do you still contend that there were “no plausible grounds for disputing the order’s lawfulness,”

even though over a dozen judges found the order was unlawful?

RESPONSE: (b) (5)

18. You testified at your nomination hearing that you are concerned about “the willingness of some district court judges to wade into matters of national security where, in the past, courts would not have presumed to be enjoining those kinds of things,” specifically citing the travel ban. If a President issues a discriminatory executive order while claiming a justification of national security, do you agree that it is the responsibility of a court evaluating a challenge to that executive order to review its lawfulness and strike down the executive order if the court finds it violates the Constitution or a statute?

RESPONSE: (b) (5)

19. There are 67,000 Americans who are dying every year from drug overdoses. You once said “. . . I don’t consider it an unjust sentence to put a [drug] courier . . . in prison for five years. The punishment fits the crime.” We cannot incarcerate our way out of the opioid crisis. How would you use the resources of the Department of Justice to help those suffering from addiction get the help they need?

RESPONSE: (b) (5)

20. At your nomination hearing, you testified that you did not agree with the proffered percentage of nonviolent drug offenders within the federal prison population, stating that “sometimes the most readily provable charge is their drug-trafficking offenses rather than proving culpability of the whole gang for murder.” Is it your view that many individuals in prison for nonviolent drug offenses have committed violent crimes? If so, please provide the evidence you rely on in support of this contention.

RESPONSE: Based on my prior experience as Attorney General, I believe that indeed sometimes the most readily provable offense is drug trafficking, notwithstanding the fact that the crime involved violence. My understanding is that U.S. Sentencing Commission data shows that a number of convicted federal drug offenders carried or used a weapon during their offense, that many federal drug offenses resulted in bodily injury, and that many federal drug offenders have prior convictions for violent offenses.

21. Why did you sign a letter opposing passage of the Sentencing Reform and Corrections Act in 2015? Please explain the basis for your opposition to bipartisan sentencing reform.

RESPONSE: (b) (5)

22. If confirmed, will you reevaluate the Department of Justice’s position to refuse to defend the Affordable Care Act and, in the process of doing so, consult with career officials who disagreed with the Department’s position not to defend the law?

RESPONSE: (b) (5)

23. Last Congress, I was grateful to join with Senator Toomey to introduce the NICS Denial Notification Act (S.2492) – a bipartisan, commonsense bill that ensures that state and federal law enforcement are working together to prevent those who should not be able to buy a gun from getting one. However, these “lie and try” cases are rarely prosecuted at the federal level. Will you work with me on this bill to ensure that state law enforcement has the information to prosecute violations of “lie and try” laws?

RESPONSE: (b) (5)

24. Studies show that five percent of gun dealers sell 90 percent of guns that are subsequently used in criminal activity. How would you direct the Department of Justice to instruct the Bureau of Alcohol, Tobacco, Firearms and Explosives to crack down on dealers that funnel thousands of crime guns to city streets?

RESPONSE: (b) (5)

25. Individuals are being jailed throughout the country when they are unable to pay a variety of court fines and fees. There is often little or no attempt to learn whether these individuals can afford to pay the imposed fines and fees or to work out alternatives to incarceration.

- a. Under your leadership, would the Department of Justice work to end this practice?

RESPONSE: (b) (5) Per CRM

- b. What is your position on the practice of imposing unaffordable money bail, which results in the pretrial incarceration of the poor who cannot afford to pay?

RESPONSE: (b) (5) Per CRM

26. What would you do to ensure vigorous enforcement of the Ethics in Government Act, bribery and honest services laws, and anti-nepotism laws?

RESPONSE: (b) (5) Per CRM

27. The total volume of worldwide piracy in counterfeit products is estimated to be 2.5% of world trade (USD \$461 billion). Counterfeit products such as fake pharmaceutical drugs

or faulty electronics can cause direct physical harm to Americans, and the profits from these illicit sales often go directly to the coffers of organized crime. How would you use Department of Justice resources to address this growing threat?

RESPONSE: (b) (5) Per CRM

28. The Department of Justice has made substantial efforts to combat trade secret theft by foreign nationals. In 2009, only 45 percent of federal trade secret cases were against foreign companies; this number increased to over 83 percent by 2015.

- a. Would you prioritize enforcement actions to combat trade secret theft by foreign nationals?

RESPONSE: (b) (5) Per CRM

- b. How do you plan to continue the Department of Justice's efforts to successfully target criminal trade secret theft?

RESPONSE: (b) (5) Per CRM

29. The United States is currently facing a massive cybercrime wave that the White House has estimated costs more than \$57 billion annually to the U.S. economy. However, a recent study using the Justice Department's own data found that only an estimated three in 1,000 cyberattacks in this country ever result in an arrest.

- a. Do you agree that we have to narrow this enforcement gap?

RESPONSE: (b) (5) Per CRM

- b. Although it may be difficult to successfully extradite and prosecute individuals located in countries like China, there have been a number of cases in which the U.S.

has had success in arresting and extraditing cyber-attackers from foreign countries. Do you agree that we should be more aggressive in using existing laws against cyber- criminals located abroad, such as in China?

RESPONSE: (b) (5) Per CRM

- c. Will you commit to ensuring that the Computer Crime and Intellectual Property Section and the Office of International Affairs are fully staffed, should you be confirmed?

RESPONSE: (b) (5) Per CRM

- d. What actions would the Department take under your leadership to strengthen private sector cooperation in cybercrime investigations?

RESPONSE: (b) (5) Per CRM

30. The CLOUD Act, a bill that I worked hard on with Chairman Graham and Senator Whitehouse, became law last year. This legislation authorizes the U.S. government to enter into agreements with foreign partners to facilitate law enforcement access to electronic communications. No such agreements have been entered into yet. Will you explore using these agreements to further leverage cooperation on cybercrime investigations?

RESPONSE: (b) (5)

31. You testified that protecting the integrity of elections would be one of your top priorities as Attorney General.

- a. Do you agree that certain photo ID laws can disenfranchise otherwise eligible voters and disproportionately and unreasonably burden African-American and Latino voters?

RESPONSE: (b) (5)

- b. If confirmed, will you work with Congress to restore preclearance review under the Voting Rights Act by helping to develop a coverage formula that the Department of Justice would support?

RESPONSE: (b) (5)

32. You testified at your nomination hearing that it might be appropriate to prosecute a journalist if that journalist “has run through a red flag or something like that, knows that they’re putting out stuff that will hurt the country.” Please explain how you would evaluate if a journalist has “run through a red flag” or is putting out information that “will hurt the country.”

RESPONSE: (b) (5)

33. While you were Attorney General, you were involved in litigation related to the detention of HIV-positive Haitians in Guantanamo Bay.
- a. In the litigation, the Justice Department represented to the Supreme Court that anyone who was identified as having a credible fear of persecution upon return to Haiti was to be brought to the United States for an asylum hearing. After making that representation, the administration changed its policy to hold HIV-positive Haitians, even those who had already been identified as having a credible fear of persecution, in Guantanamo Bay. Do you dispute that the Justice Department supported detentions of HIV-positive Haitians in Guantanamo Bay after representing to the Supreme Court that HIV-positive Haitians with a credible fear of persecution would be brought to the U.S. for an asylum hearing?

RESPONSE: (b) (5)

- b. In that same litigation, the Justice Department represented to the Supreme Court that tens of thousands of Haitians wanted to flee violence in their home country, drawn by the “magnet effect” of a judicial decision issued by the Eastern District of New York. There was no credible evidence of this so-called magnet effect. Do you regret that the Justice Department made this unsubstantiated claim?

RESPONSE: (b) (5)

34. At your nomination hearing, you testified that you had not looked at the issue of birthright citizenship. Please review this article by John Yoo, entitled “Settled law: Birthright citizenship and the 14th Amendment,” available at <https://www.aei.org/publication/settled-law-birthright-citizenship-and-the-14th-amendment/>.

- a. Do you agree that the text of the Fourteenth Amendment guarantees birthright citizenship?

RESPONSE: (b) (5)

- b. Do you support the revocation or modification of the Fourteenth Amendment's constitutional guarantee of birthright citizenship?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR BLUMENTHAL

1. In June 2018, the FCC's plan to abdicate its authority over net neutrality came into effect. While the FCC has signed a memorandum of understanding with the FTC over unfair and deceptive practices by internet service providers, these actions have left consumers without clear rules and effective enforcement over net neutrality violations.

While the FCC and FTC are primarily responsible for oversight over internet service providers, the Department of Justice has interceded in cases regarding net neutrality in the past. Most recently, the California Attorney General reached a temporary agreement with the Department of Justice to delay their law from taking effect until federal lawsuits over the FCC's rollback of net neutrality are resolved.

When you were in private practice, you were significantly involved with telecommunications companies and other interests that were implicated in net neutrality. Most significantly, you served as General Counsel and Executive Vice President of Verizon Communications for eight years, during which you argued against net neutrality based on concerns over its impact on Verizon's revenue. For example, you reportedly stated that net neutrality regulations might prevent broadband providers like Verizon from earning "an adequate return." You also recently served on the board of Time Warner, which is seeking to merge with AT&T. Both affiliations create the appearance of potential conflicts of interest with regard to oversight of internet service providers and enforcement of net neutrality.

- a. At least four states have passed their own net neutrality laws since the FCC abdicated its responsibility and still more are considering taking action to protect their residents. Do you intend to continue to pursue litigation to prevent states from enforcing their own laws to protect net neutrality? Under what specific conditions will the Department of Justice intervene against states that regulate discriminatory conduct within their state?

RESPONSE: (b) (5)

- b. Verizon and other internet service providers originally sued California to prevent the implementation of their net neutrality protections, and have been parties to most fights over the open internet. Considering the potential appearance of conflicts of interest based on your previous professional affiliations and statements on net neutrality, will you commit to recuse yourself from any cases that involve the enforcement or defense any net neutrality laws?

RESPONSE: (b) (5)

- c. Given concerns over the appearance of conflicts of interest, will you recuse yourself from any cases that involve specific claims of discriminatory conduct by Verizon that may come before the Department of Justice? Will you recuse yourself from any cases that involve specific claims of discriminatory conduct by other internet service providers?

RESPONSE: (b) (5)

2. The Music Modernization Act was the result of years of bipartisan work by many members of the Judiciary Committee. The Department of Justice is currently conducting a sweeping review of 1,300 consent decrees, including the ASCAP and BMI consent decrees. These decrees play a critical role in allowing Americans to hear their favorite songs. I am concerned that terminating the ASCAP and BMI consent decrees could undermine the Music Modernization Act and permit the accumulation and abuse of market power.
 - a. Can you commit that the Department of Justice will work with Congress to develop an alternative framework prior to any action to terminate or modify the ASCAP and BMI consent decrees?

RESPONSE: (b) (5)

3. The Federal Correctional Institution in Danbury, Connecticut is home to over 1,000 federal inmates. It hosts important education and literacy programs, including some programs that bring in students from outside the institution to study with students housed inside the institution. Educational programs such as these are critical to restoring fairness to our criminal justice system and preparing inmates to contribute to society once have finished serving their time.
 - a. Do you agree with me that education and literacy programs are important parts restoring fairness and opportunity to our criminal justice system?

RESPONSE: (b) (5)

- b. What steps will you take as Attorney General to ensure that programs like the ones at the Federal Correctional Institution in Danbury are provided with the necessary resources?

RESPONSE: (b) (5)

- c. What steps will you take to expand successful prison education programs on a nationwide basis?

RESPONSE: (b) (5)

- d. Do you supporting restoring Pell grant funding to people in prison? Please explain the reasoning behind your position.

RESPONSE: (b) (5)

4. During your confirmation hearing I asked you if you maintained the position you expressed in 1991, that *Roe v. Wade* should be overruled. You responded:

“I said in 1991 that I thought as an original matter it had been wrongly decided, and that was, what, within 18 years of its decision? Now it's been 46 years, and the department has stopped, under Republican administration, stopped as a routine matter asking that it be overruled, and I don't see that being turned--you know, I don't see that being resumed.”

- a. Are you suggesting that you will not direct the Department of Justice to advocate to overturn *Roe*, or that it is merely unlikely that you will issue such an order?

RESPONSE: (b) (5)

- b. In your answer at the hearing you indicated that proximity in time to a Supreme Court ruling determines when you respect a precedent. In your opinion, when between 18 and 46 years does the principal of *stare decisis* attach?

RESPONSE: (b) (5)

- c. How do you determine when to give deference to a precedent?

RESPONSE: (b) (5)

- d. Does societal reliance on a precedent matter for *stare decisis* considerations?

RESPONSE: (b) (5)

5. As you know, American student loan borrowers now collectively owe more than \$1.5 trillion in student debt. The U.S. Department of Education relies on a number of large private-sector financial services firms to manage accounts and collect payments for more than \$1.2 trillion dollars of this debt. These firms have been the target of investigations and litigation by a range of state law enforcement agencies and regulators, alleging widespread abuses. This led Connecticut to pass the first comprehensive consumer protections in this area.

In the face of mounting litigation, beginning in 2017, the United States adopted the new legal position that it was never the government's expectation that these firms comply with state consumer law, including state prohibitions against unfair and deceptive practices,

because these laws were preempted by federal law. To this end, in early 2018, the U.S. Department of Justice took the extraordinary step of filing a "statement of interest" in a lawsuit brought by the Massachusetts Attorney General related to one company's alleged mishandling of the federal Public Service Loan Forgiveness program in which DOJ urged a state trial court judge to side with the student loan company over that state's top law enforcement official. In late 2018, DOJ filed a second "statement of interest" in a federal trial court supporting affirmative litigation brought by a student loan industry trade association, which opposed an effort by the District of Columbia to empower its banking department to oversee the practices at these firms. In both instances, the United States departed from its long-held position supporting federalism and states' historic police powers in the student loan market-- a position that spanned administrations of both parties-- to side with the student loan industry.

- a. Will you commit to restoring the past position of the DOJ and refraining from filing further actions opposing state consumer protection litigation in the student loan market?

RESPONSE: (b) (5)

6. In recent years, Congressional investigations and leaked financial documents (i.e. Panama and Paradise Papers) have shown the extent to which the wealthiest citizens and corporations around the world—including the United States—use sophisticated financial strategies to avoid and evade taxes. Some of these moves are illegal, depriving the federal government of revenue and preventing the wealthiest from paying their fair share in the process.

- a. Will you commit to making the full, fair, and consistent enforcement of tax laws a priority of the department during your tenure?

RESPONSE: (b) (5)

7. Former White House Chief of Staff John Kelly recently stated that Attorney General Jeff Sessions “surprised” the Administration when he instituted a zero-tolerance policy that led to the family separation crisis on the border.

- a. Can you commit to me that you will never support a policy that leads to mass family separation?

RESPONSE: (b) (5)

8. President Trump recently issued a Presidential Proclamation barring certain individuals from receiving asylum. This policy could result in deporting asylum seekers back to their death. In addition to being needlessly cruel, this Proclamation is illegal under our laws and under international law. For this reason, a federal judge has already issued a temporary restraining order blocking it from going into effect. A federal appeals court upheld this temporary restraining order. I have previously written to President Trump demanding that he revoke this unlawful Proclamation rather than continuing to fight a losing battle in

court. So far, he has not done so.

- a. INA § 208(a)(1) is clear on this question. It says that any individual who arrives in the United States, “*whether or not at a designated port of arrival*,” may apply for asylum. Can you please explain how President Trump’s Proclamation is legal?

RESPONSE: (b) (5)

- b. Will you commit to advising the president to rescind this proclamation?

RESPONSE: (b) (5)

9. In 1990, you put forward an argument that Congress had very limited ability to control how the Executive spends congressionally appropriated funds. You stated – quote – “there may be an argument that if the president finds no appropriated funds within a given category to conduct activity, but there is a lot of money sitting somewhere else in another category — and both categories are within his constitutional purview — he may be able to use those funds.” In these remarks, you looked for a source of constitutional authority for Congress to control Executive spending, but you weren’t able to find one.

- a. Do you believe that Congress has constitutional authority to limit or control the Executive’s spending?

RESPONSE: (b) (5)

- b. In your remarks in 1990, you asked a simple question regarding Congress’s appropriations power: “What is the source of the power to allocate only a set amount of money to the State Department and to restrict the money for that activity alone?” I would like you to answer your own question.

RESPONSE: (b) (5)

10. Late last year, I wrote to the Department of Justice regarding Amazon’s use of most favored nation clauses in its contracts with third-party sellers on its site. I am deeply concerned that these hidden clauses are artificially raising prices on goods that millions of consumers buy every year. Amazon’s most favored nation clauses prevent sellers operating on its site from selling their goods at lower rates on other online marketplaces. This means that third-party merchants who sell on online marketplaces with lower transaction fees cannot pass on these savings to consumers. Relatedly, e-commerce sites that want to compete with Amazon to attract sellers will have trouble doing so by charging third-party sellers lower fees, given that third-party sellers could not pass these savings on to consumers. As a result, most favored nation clauses can also act as a barrier to entry for competitors. Roughly, five years ago, UK and German antitrust regulators opened an investigation into Amazon’s most favored nation clauses – and Amazon announced it

would stop enforcing these most favored nation clauses in Europe. However, it continues to enforce them here in the United States.

- a. Do you agree that Amazon's use of most-favored nation clauses in its contracts with third party sellers on its site could raise competition concerns?

RESPONSE: (b) (5)

- b. Would you commit to investigating Amazon's use of most-favored nation clauses in its contracts with third-party sellers on its site?

RESPONSE: (b) (5)

11. Corporate consolidation does not only threaten consumers; it threatens workers. At a hearing last October, I asked Assistant Attorney General Delrahim to provide an example of the last time labor market considerations were cited as the basis for rejecting a merger. Mr. Delrahim has still not provided a single example.

- a. Do you believe that labor market considerations are relevant to merger review?

RESPONSE: (b) (5)

- b. Can you commit to me that in every merger where the Department of Justice makes a second request, it will include a request for data related to labor market considerations?

RESPONSE: (b) (5)

12. I am deeply concerned about the growth of non-compete clauses, which block employees from switching to another employer in the same sector for a certain period of time. These clauses weaken workers' bargaining power once they are in the job, because workers often cannot credibly threaten to leave if their employer refuses to give them a raise or imposes poor working conditions. According to the Economic Policy Institute, roughly 30 million workers – including one in six workers without a college degree – are now covered by non-compete clauses. Just this past December, President Trump's administration released a report indicating that non-compete clauses can be harmful in particular contexts, such as the healthcare industry.

- a. Do you believe that non-compete clauses pose a threat to American workers?

RESPONSE: (b) (5)

- b. What action do you intend to take regarding non-compete clauses?

RESPONSE: (b) (5)

13. Last month, we learned that Facebook has been selling more of users' personal data than previously disclosed. For example, it allowed Netflix and Spotify to read Facebook users' private messages. It is unconscionable and unacceptable that a company is able to act with such disregard for the privacy rights of its users. One reason that Facebook is able to get away with it is that they hold such a powerful market position. This allows them to impose poor privacy conditions on their users.

There is growing evidence that Facebook is willing to go to extreme lengths to protect its market power. Recently, the UK Parliament released documents showing Facebook's ruthless attempts to shut down competitors. In 2013, Facebook was concerned about competition from Vine. A Facebook executive asked Mark Zuckerberg whether he could target Vine by shutting off Vine users' ability to find their friends via Facebook. Mr. Zuckerberg's response: "Yup, go for it."

- a. Do you believe this sort of action could constitute anticompetitive conduct?

RESPONSE: (b) (5)

14. When Americans use Google to search for products, the top result should be the one that best answers users' queries – not the result that is most profitable to Google. But there is growing concern that this is not the case. Just over a year ago, the European Union concluded that Google has been manipulating search results to favor its own comparison shopping service. Now, the European Union is reportedly investigating whether Google is unfairly demoting local competitors in its search results.

- a. Do you believe that there is sufficient evidence for the Department of Justice to act?

RESPONSE: (b) (5)

15. In a 2017 article, you wrote, "through legislative action, litigation, or judicial interpretation, secularists continually seek to eliminate laws that reflect traditional moral norms." According to your piece, secularists were attempting to, "establish moral relativism as the new orthodoxy" and in the process producing an explosion of crime, drugs, and venereal disease.

As an example of this trend, you discuss laws that, "seek to ratify, or put on an equal plane, conduct that previously was considered immoral. For example, "laws are proposed that treat a cohabitating couple exactly as one would a married couple. Landlords cannot make the distinction, and must rent to the former just as they would to the latter."

The implications of your statement for same-sex couples are troubling. At that time you wrote those words, same-sex couples were not allowed to get married. So, if landlords at

that time were allowed to discriminate against unmarried couples, they would have been allowed to refuse to rent to any same-sex couple, essentially forcing millions of Americans to choose between living where they want and living with the person they love.

- a. Do you believe landlords should be able to discriminate against unmarried couples?

RESPONSE: (b) (5)

- b. Do you believe landlords should be able to discriminate against gay and lesbian Americans?

RESPONSE: (b) (5)

- c. If landlords can discriminate based on moral condemnation of unmarried couples and gay people, could a landlord refuse to rent to a Jew because he has a moral objection to that faith? If landlords should be allowed to express their moral beliefs by discriminating against groups they consider morally repugnant, where does that stop?

RESPONSE: (b) (5)

Another example of this trend you highlighted was, “the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like any other student groups.” You argued that, “This kind of law dissolves any form of moral consensus in society.”

You argued that the law undermined a “moral consensus.” But D.C.’s law was passed by the city’s elected officials. My understanding is that it is broadly popular in the city, and I suspect it is broadly popular on Georgetown’s campus as well. If Georgetown were allowed to discriminate against LGBT organizations, it would be rejecting a moral consensus, not embracing one.

- d. In your view, is there a “moral consensus” against gay and lesbian student groups?

RESPONSE: (b) (5)

- e. What did you mean when you suggested that protections against discrimination “dissolve[] any form of moral consensus in society”?

RESPONSE: (b) (5)

- 16. One of the major achievements of the last century is the recognition that racial segregation is a great moral and legal wrong. The Supreme Court recognized this truth in one of its most esteemed decisions, *Brown v. Board of Education*. I would hope that, in 2019, the

correctness of the *Brown* decision cannot be in dispute.

Yet here we are, two years into the Trump Administration and judicial nominee after judicial nominee has come before this committee firmly and repeatedly declining to say that they believe *Brown* was correctly decided. If confirmed as Attorney General, you will oversee the Office of Legal Policy. Part of your duties will be to advise the president on judicial nominations, so I ask you this:

- a. Do you believe *Brown v. Board of Education* was correctly decided?

RESPONSE: (b) (5)

- b. Will you commit to only recommending for nomination individuals who believe *Brown* was correctly decided?

RESPONSE: (b) (5)

17. The 14th Amendment states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States.” President Trump claims that “the 14th Amendment is very questionable as to whether or not somebody can come over and have a baby and immediately that baby is a citizen.”

- a. Do you agree with President Trump?

RESPONSE: (b) (5)

- b. Can the president eliminate birthright citizenship by executive order?

RESPONSE: (b) (5)

18. In a 2001 interview with the Miller Center at the University of Virginia, you discussed how you prepared to advise President George H.W. Bush to deploy the army to address the Rodney King riots in Los Angeles. You said that, “basically the President has to issue a proclamation telling people to cease and desist and go to their homes. . . And then if they don’t cease and desist, you’re allowed to use regular army.” This seems like remarkably cavalier position on the use of the American military against the American people.

- a. As you know, President Trump has expressed a willingness and desire to invoke national emergency powers to build a wall on the southern border. Would you advise him to do so?

RESPONSE: (b) (5)

- b. What factors would you consider before advising the president to declare a

national emergency? What do you think constitutes a national emergency?

RESPONSE: (b) (5)

- c. In your opinion, what limits – if any – are there to the president’s use of the military in domestic matters?

RESPONSE: (b) (5)

- 19. Just months before the 1992 presidential election, several employees of the State Department — at the direction of the Assistant Secretary of State for Consular Affairs — searched a National Archives warehouse for then-candidate Bill Clinton’s passport files. According to the State Department Inspector General, the search was conducted “in the hope of turning up damaging information about Clinton that would help President Bush’s reelection campaign” — namely, “whether Clinton had ever written a letter at the time of the Vietnam War renouncing or considering renouncing his U.S. citizenship.”

In a 2001 interview, you said you were still bitter about this investigation. Specifically, you said, “the career people in the public integrity section had some kind of wacky theory, a very broad theory that if the search was done for a political reason, it was improper.” You went on to say that you believe that, “if an executive official has the power to open a file and look in a file, it’s not illegal that he may have a political motivation in doing so.”

- a. Do you stand by your statement?
- b. Is it your view that law enforcement is free to investigate people to gather political intelligence for a campaign?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR HIRONO

1. At your hearing you both told Senator Graham that you don't believe Robert Mueller would be involved in a "witch hunt," and expressed to me that you had sympathy for Donald Trump's calling it that.

You said, "the President is one that . . . has denied that there was any collusion and has been steadfast in that. . . . But I think it is understandable that if someone felt they were falsely accused, they would view an investigation as something like a witch hunt, where someone like you or me who does not know the facts, you know, might not use that term."

If you don't believe that Mr. Mueller would conduct an unfounded investigation, and if you know about the numbers of indictments and guilty pleas entered so far, why would you express sympathy for the President's insulting characterization of the Special Counsel's work?

RESPONSE: (b) (5)

2. You mentioned that you had lunch with Deputy Attorney Rod Rosenstein and tried to sell him on your theory that a President can never obstruct justice if his actions are among those properly delegated to the Chief Executive, even if they have a corrupt intent. You described his reaction as "sphinx-like." Did you think that reaction was improper, given the fact that you were not a Department official and had no basis to be involved in the case? Are you implying he should have reacted more positively to you? Why?

RESPONSE: (b) (5)

3. To explain why you provided unsolicited input to narrow the scope of Special Counsel Mueller's investigation – efforts that you noted were resisted by Deputy Attorney General Rosenstein – you asserted that you also "weighed in repeatedly to complain about the idea of prosecuting Senator Menendez" when your "friend . . . was his defense counsel."
 - a. Do you think it is proper for non-Department of Justice (DOJ) officials, including former Attorneys General, to weigh in to seek to influence law enforcement decisions, particularly when such decisions have a personal benefit?

RESPONSE: (b) (5)

- b. Should you be confirmed, how will you respond when others give you unsolicited input or seek to influence Special Counsel Mueller's investigation?

RESPONSE: (b) (5)

4. In the 19-page unsolicited memo addressed to Justice Department officials that you distributed to Donald Trump's private and White House Attorneys, you argued that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction" and that "[i]t is inconceivable to me that the Department could accept Mueller's interpretation of §1512(c)(2). It is untenable as a matter of law and cannot provide a legitimate basis for interrogating the President." Despite making such strong and unequivocal assertions, you claimed you did not know many facts about Special Counsel Mueller's investigation.

You testified at your hearing that you "do not recall getting any confidential information about the investigation." Please review your emails, notes, and any other relevant materials. Having reviewed those materials, did you receive any confidential information about Special Counsel Mueller's investigation? Do you recall getting any information whatsoever about the investigation from anyone? If you did, who gave it to you?

RESPONSE: (b) (5)

5. At your hearing, you mentioned two meetings you had with Donald Trump.
- a. Are those two meetings that you mentioned at the hearing the only times you have met with Donald Trump? If not, when else have you met with him? Where?
- b. Have you had any telephone conversations with Donald Trump? If so, where? When?
- c. Please tell us the details of all of your meetings and telephone calls with the President, including the following:
- Where were the meetings?
 - Who was present for the meetings and the phone calls?
 - How long did each meeting or phone call last?
 - What was discussed?
 - What promises, if any, did the President ask you to make?
 - Did the President ask for your loyalty?
 - Did he make any threats?
 - Do you have any notes from any of the meetings or phone calls?
 - Did anyone else in the meetings or on the phone calls take notes?

RESPONSE: (b) (5)

6. The former head of the Office of Government Ethics, Walter Shaub, believes you were wrong in your testimony about government ethics rules. You testified that you would seek the opinion of ethics officials about whether or not you should recuse yourself from the Special Counsel's investigation, but that you would not necessarily follow it. You reserved the right to ignore their advice and decide for yourself. Mr. Shaub points to 5 C.F.R. 2635.502(c), which requires you to follow the guidance of your designated agency ethics official. Is Mr. Shaub correct? If not, why not?

RESPONSE: (b) (5)

7. In light of 5 C.F.R. 2635.502(c), will you commit to following the opinion of career ethics officials on whether or not you should recuse yourself from the Special Counsel's investigation?

RESPONSE: (b) (5)

8. You testified at your hearing that you think former FBI Director James Comey "is an extremely gifted man who has served the country with distinction in many roles," although you disagreed with some actions he took in the investigation of Hillary Clinton's emails. What do you think about the President's insults of Mr. Comey? The President has referred to the former FBI Director as "Leakin' James Comey," called him a liar multiple times, a "bad guy," a "slime ball," "slippery," and "shady."

RESPONSE: (b) (5)

9. At your hearing, you testified to Senator Cornyn that you "completely agree with" the memo Rod Rosenstein wrote justifying former FBI Director James Comey's firing.

But do you believe Donald Trump really fired James Comey because he was too harsh on Hillary Clinton, or because he didn't follow Department of Justice guidelines? Do you discount the other explanations Donald Trump has given – specifically, that he told Lester Holt of NBC on air that he fired Mr. Comey because of "this Russia thing," and that he told the Russian Ambassador and Russian Foreign Minister in the Oval Office that he fired Mr. Comey, referring to the former FBI Director as "crazy, a real nut job," and saying, "I faced great pressure because of Russia. That's taken off."?

RESPONSE: (b) (5)

10. You told Sen. Feinstein at your hearing that you would "[a]bsolutely" commit "to ensuring that Special Counsel Mueller is not terminated without good cause consistent with Department regulations."

Would the President's displeasure with a lawful action by Special Counsel Mueller taken in accordance with Justice Department regulations constitute good cause?

RESPONSE: (b) (5)

11. You told Senator Durbin at your hearing that there is nothing wrong with an Attorney General taking a policy position that happened to have a political benefit to it. But do you agree that an Attorney General should not formulate policies just BECAUSE they are politically advantageous?

RESPONSE: (b) (5)

12. At your hearing, you told Senator Whitehouse that with respect to finding out the sources of payments to Acting Attorney General Whitaker, "my first consideration always is where do you – where do you draw the line, and also what are the implications for other kinds of entities because, you know, there are membership groups and First Amendment interests" Why is that your FIRST consideration? What about transparency and confidence in the system? Shouldn't they be your first considerations in addressing conflicts of interest by the nation's top law enforcement official?

RESPONSE: (b) (5)

13. I asked you at your hearing whether you believe birthright citizenship is guaranteed by the Fourteenth Amendment. You said you had not looked at the issue and that you would ask the Justice Department's Office of Legal Counsel to advise you on "whether it is something that is appropriate for legislation."

In 1995, Walter Dellinger, then-Assistant Attorney General for the Office of Legal Counsel testified in the House Judiciary Subcommittees on Immigration and Claims and on the Constitution that to change birthright citizenship the Constitution would have to be amended. See <https://www.justice.gov/file/20136/download>.

Now that you have had a chance to look at the Constitution, and read Mr. Dellinger's testimony, do you believe that birthright citizenship is guaranteed by the 14th Amendment?

RESPONSE: (b) (5)

14. When you were Attorney General for President George H.W. Bush, you recommended that he pardon people implicated in the Iran-Contra scandal. You told the Miller Center

about it, saying, “I went over and told the President I thought he should not only pardon Caspar Weinberger, but while he was at it, he should pardon about five others. I favored the broadest — There were some people arguing just for Weinberger, and I said, ‘No, in for a penny, in for a pound.’ Elliot[t] Abrams was one I felt had been very unjustly treated.”

President Bush issued the pardons you recommended, and they were widely viewed as having the effect of protecting the President and others from having to testify in any related cases. At the time the pardons were issued, Independent Counsel Lawrence Walsh, criticized them, and said, “The Iran-Contra cover-up, which has continued for more than six years, has now been completed.”

a. Why did you recommend the Iran-Contra pardons?

RESPONSE: (b) (5)

b. If confirmed, will you recommend that Donald Trump pardon any of the people who have already been convicted or have pleaded guilty under Special Counsel Robert Mueller’s investigation or in related cases?

RESPONSE: (b) (5)

c. Would you agree that pardoning anyone who is subject to a current indictment or will be subject to a future indictment by the Special Counsel could be seen as undermining the Special Counsel’s investigation and an abuse of the President’s pardon power?

RESPONSE: (b) (5)

d. Do you believe it is proper for the President to use his pardon power to pardon his family members or any associates, businesses, foundations, campaigns, or organizations in which he has a personal interest?

RESPONSE: (b) (5)

e. Will you recommend Donald Trump pardon any of the people convicted, indicted, or under investigation by Special Counsel Robert Mueller or any of the related cases in other districts that relate to President Trump’s business, foundation, campaign, inauguration, administration, family, or associates?

RESPONSE: (b) (5)

15. At your hearing, you stated, “I will vigorously enforce the Voting Rights Act.” The Trump administration has not brought a single lawsuit to enforce the Voting Rights Act. Moreover, the administration has actually withdrawn the Justice Department’s claim

against a Texas voter ID law that a federal district court judge found was enacted with discriminatory intent and reversed its position in a case by defending Ohio's voter purge efforts that Justice Sotomayor recognized "disproportionately affected minority, low-income, disabled, and veteran voters." In fact, career attorneys in the Civil Rights Division did not sign the amicus brief defending the voter purge efforts as they did the prior brief.

- a. Since you agreed that you would "vigorously enforce the Voting Rights Act," should you be confirmed, will you commit to asking the Voting Rights Section of the Civil Rights Division to present to you all the instances where the Justice Department has been asked to initiate Section 2 claims under the Voting Rights Act and allowing the career attorneys in the Voting Rights Section to bring claims where appropriate?

RESPONSE: (b) (5)

- b. Similarly, if confirmed, will you commit to investigating, evaluating, and reviewing those states and jurisdictions—including any that were formerly covered under the Voting Rights Act's preclearance system—that have passed voting laws that tend to hinder voter turnout to determine if they are, in fact, discriminatory, and to bring Section 2 claims under the Voting Rights Act for any that are found to have a discriminatory impact or purpose?

RESPONSE: (b) (5)

- c. Should you be confirmed, will you commit to working with Congress to support a fix to Section 5 of the Voting Rights Act, which was nullified by the Supreme Court in *Shelby County v. Holder*?

RESPONSE: (b) (5)

- d. If confirmed, will you commit to reviewing the decisions by the Justice Department to switch positions in the following two cases to determine whether customary processes for changing the government's position in a case were followed and what, if any, improper influences impacted those decisions? The two cases are: (1) *Veasey v. Abbott*, where the Department withdrew its claim that a Texas voter ID law was enacted with a discriminatory intent, despite a finding of discriminatory intent by a federal district court, and (2) *Husted v. A. Philip Randolph Institute*, where the Department reversed its position by defending Ohio's voter purge efforts under the National Voter Registration Act, even though Justice Sotomayor recognized such efforts "disproportionately affected minority, low-income, disabled, and veteran voters."

RESPONSE: (b) (5)

16. After the Supreme Court's decision in *Shelby County v. Holder*, many states passed voting restriction laws based on claims of going after voter fraud. But a 2014 study found a total

of 31 credible allegations of voter fraud between 2000 and 2014 out of more than 1 billion votes cast.

- a. Are you aware of any credible study that confirms that there was massive voter fraud, not election fraud, in either the 2016 or 2018 election?

RESPONSE: (b) (5)

- b. Do you agree that voter fraud is incredibly rare in the context of the number of votes cast?

RESPONSE: (b) (5)

17. In a 2017 report entitled *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, the Civil Rights Division explained that "its experience demonstrates that court-enforceable consent decrees are most effective in ensuring accountability, transparency in implementation, and flexibility for accomplishing complex institutional reforms. Federal court oversight is often critical to address broad and deeply entrenched problems and to ensure the credibility of the reform agreement's mandates." But last November, just before leaving the Department, former Attorney General Jeff Sessions issued a memo that drastically limited use of consent decrees to bring police departments into compliance with the Constitution. At your hearing, you stated that you agreed with Mr. Sessions's memo and questioned whether the policy changes in the memo would make it tougher to enter into consent decrees for pattern or practice violations.

- a. Do you agree with the Civil Rights Division's report that based on its experience, "court-enforceable consent decrees are most effective" in accomplishing complex institutional reforms in a transparent way that ensures accountability?

RESPONSE: (b) (5)

- b. Despite the Civil Rights Division's finding regarding the historical effectiveness of consent decrees, Mr. Sessions's memo warns that "the Department should exercise special caution before entering into a consent decree with a state or local governmental entity." Among other changes, it requires any consent decrees to be approved not only by the Assistant Attorney General for Civil Rights or the U.S. Attorney, but also by the Deputy Attorney General or the Associate Attorney General. Would you now agree that that Mr. Sessions's memo imposes more stringent requirements for the Civil Rights Division to pursue consent decrees, making it harder to enter into consent decrees for pattern or practice violations? If not, please explain.

RESPONSE: (b) (5)

- c. At your hearing, you recognized that “the Department has a role in pattern and practice violations.” Please specify what role you believe the Civil Rights Division should play in pattern or practice violations.

RESPONSE: (b) (5)

18. Former Attorney General Sessions eliminated a highly effective program handled by the Office of Community Oriented Policing Services—also known as the COPS Office—that allowed local police departments to voluntarily work with Justice Department officials to improve trust between police and the public without court supervision and consent decrees. Former head of the Justice Department’s Civil Rights Division Vanita Gupta criticized this decision, saying “[e]nding programs that help build trust between police and the communities they serve will only hurt public safety.”

Under the Collaborative Reform Initiative for Technical Assistance program, local police departments involved in controversial incidents, such as police-involved shootings, would ask the COPS Office to investigate and issue public reports with recommendations.

- a. If confirmed, will you reinstate this program?

RESPONSE: (b) (5)

- b. If confirmed, what steps will you take to support and promote community-oriented policing?

RESPONSE: (b) (5)

19. The Washington Post published an article on January 3, 2019 that reported that a “recent internal Justice Department memo directed senior civil rights officials to examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be.” In 2015, the Supreme Court, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, affirmed that the Fair Housing Act protects against discrimination based on a disparate impact.

- a. Do you believe that there are actions that can have a discriminatory impact regardless of intent? If so, how do you propose such actions should be addressed or remedied?

RESPONSE: (b) (5)

- b. Do you believe that a valid way to demonstrate discrimination is through a disparate impact analysis?

RESPONSE: (b) (5)

- c. If you are confirmed, will you continue this reported DOJ effort to change or remove disparate impact regulations related to enforcing civil rights laws?

RESPONSE: (b) (5)

20. Last July, the Justice and Education Departments rescinded policy guidelines promoting diversity in education. This was in the context of a lawsuit brought by a conservative organization to challenge Harvard's diversity admissions policies. When you worked for the Reagan administration you co-wrote a memo arguing that you "want[ed] a color blind society" and did not "embrace the kind of social engineering that calls for quotas, preferential hiring and the other approaches that do nothing but aim discrimination at other racial groups."

- a. Is it your view that policies that promote diversity are the same as discrimination against other racial groups?
- b. If confirmed, will you commit to not intervening in the Harvard lawsuit or others like it?

RESPONSE: (b) (5)

21. The Justice Department includes the Office on Violence Against Women (OVW), which currently administers 25 grant programs authorized by the Violence Against Women Act (VAWA) and subsequent legislation. VAWA protects and provides services to survivors of dating violence, domestic violence, sexual violence, and stalking – four issues that impact people of all genders and sexual orientations. The law also prohibits discrimination on the "basis of actual or perceived race, color, religion, national origin, sex, gender identity..., sexual orientation, or disability."

- a. Do you believe that VAWA's protections should be extended to LGBTQ survivors of violence more fully than the current level?

RESPONSE: (b) (5)

- b. Should you be confirmed, how will you ensure that LGBTQ survivors of violence are included and represented in the services of OVW?

RESPONSE: (b) (5)

22. Recent surveys of law enforcement officials, court officials, legal service providers, and victim advocates have found that fear of immigration enforcement is a significant barrier for immigrant survivors of sexual assault and domestic violence to seek help from law enforcement and the legal system. The immigration provisions of the Violence Against Women Act were enacted to address how the immigration process can be used by domestic violence, sexual assault, dating violence and stalking abusers to further perpetrate abuse and maintain control over their victims.

If you are confirmed, what steps would you take to support access for vulnerable victims

to VAWA's protections for non-citizen victims of domestic violence, sexual assault, dating violence, and stalking?

RESPONSE: (b) (5)

23. Native Americans experience higher rates of domestic violence and sexual assault. According to a 2016 National Institute of Justice study, 56.1% of American Indian and Alaska Native women have experienced sexual violence in their lifetimes.

Should you be confirmed, what steps will you take to ensure that the Office on Violence Against Women addresses the needs of Native Hawaiian, Alaska Natives, and American Indian survivors of domestic violence and sexual assault?

RESPONSE: (b) (5)

24. When you left the Reagan Administration's Domestic Policy Council, you talked derisively about women's issues, calling feminist agenda items "pernicious" and saying, "I think the whole label women's issues is a crock."
- a. Do you still believe issues of equality for women in the workplace and elsewhere are a "crock"?
 - b. Do you believe women are discriminated against?
 - c. What is your view of the "Me Too" movement?
 - d. What do you think the role of the Justice Department should be in ensuring equality for women, and ensuring harassment-free workplaces and industries?

RESPONSE: (b) (5)

25. At your hearing, Sen. Blumenthal asked you if you would defend *Roe v. Wade* if it were challenged. You responded, without answering his question, stating: "Would I defend *Roe v. Wade*? I mean, usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that." You testified in 1992 that you believed the Supreme Court's decision in *Planned Parenthood v. Casey* "didn't go far enough" in allowing restrictions on abortions and that "*Roe v. Wade* should be overruled." Currently there are efforts to effectively gut *Roe* by narrowing it. For example, in last March, Mississippi enacted one of the most restrictive abortion laws in the country – a ban on abortions after 15 weeks. In striking down the law, the federal judge observed: "The State chose to pass a law it knew was unconstitutional to endorse a decades-long campaign, fueled by national interest groups, to ask the Supreme Court to overturn *Roe v. Wade*."

Should you be confirmed, if a case came before the Supreme Court or a lower court that presented the possibility of narrowing *Roe v. Wade*, would you have the Solicitor General or a DOJ component weigh in and argue for narrowing the scope of *Roe*, even if the case did not involve a federal statute or program?

RESPONSE: (b) (5)

26. The Justice Department has the responsibility for enforcing the Americans with Disabilities Act (ADA), one of the most successful civil rights laws passed in the United States. It has integrated people with disabilities into American life in ways they had not been before.

Last Congress, the House of Representatives passed H.R. 620, the “ADA Education and Reform Act of 2017,” which would remove most incentives for businesses to accommodate people with disabilities, and reward businesses for ignoring their responsibilities under the law. It was opposed by disability rights groups, and seen as a giant step backward for the country.

- a. Do you support these restrictions on the ADA’s protections?

RESPONSE: (b) (5)

- b. Do you believe the ADA goes too far in protecting the rights of people with disabilities?

RESPONSE: (b) (5)

- c. If confirmed, will you allow the Disability Rights Section of the Civil Rights Division to robustly enforce the ADA?

RESPONSE: (b) (5)

27. You criticized former Acting Attorney General Sally Yates for refusing to defend Donald Trump’s Muslim Ban because she did not think it was constitutional. But at your 1991 confirmation hearing, you told Senator Paul Simon that you would do the same. He asked you, “...would you automatically defend [a statute] even if you believe it is unconstitutional?” You responded, “No. In fact, I have told agencies I wouldn't defend regulations, not only if they raise constitutional questions, but if I don’t think the regulation is consistent with Congress’ intent. If the statute requires a certain action and if a regulation in my view is not consistent with the statute, then there is a legal problem with it.”

Why did you criticize Sally Yates for doing what you told Senator Simon you would do?

RESPONSE: (b) (5)

28. More than a year after the 2016 election, you told the New York Times, “I have long believed that the predicate for investigating the uranium deal, as well as the foundation, is far stronger than any basis for investigating so-called ‘collusion.’” Both Senator Leahy and Senator Blumenthal asked you about this at your hearing, but I found your answers unclear.

- a. Can you explain clearly and succinctly exactly what you believed the predicate for investigating the “uranium deal” and the Clinton Foundation were?
- b. What evidence did you have to support your contention?
- c. Where did you get that evidence?
- d. What evidence supporting an investigation into the Trump campaign’s possible collusion with Russia were you comparing it to?
- e. What was your standard for comparison?
- f. Now that you’re aware of all of the evidence of contacts and cooperation between Russian officials (many in Russian intelligence) and high-ranking officials of the Trump campaign (Paul Manafort, Jared Kushner, Donald Trump, Jr., and Rick Gates, to name a few), has your assessment of the strength of the predicate for investigating possible conspiracy changed?

RESPONSE: (b) (5)

29. At your hearing, you promised Senator Graham you would “look in to see what happened in 2016.”

- a. What exactly have you agreed to investigate?

RESPONSE: (b) (5)

- b. How will it be different from any existing investigations into what the FBI was investigating related to the 2016 elections?

RESPONSE: (b) (5)

- c. How will it be different from the DOJ Inspector General’s investigation into “Various Actions by the Federal Bureau of Investigation and the Department of Justice in Advance of the 2016 Election,” on which a report was issued in June 2018?

RESPONSE: (b) (5)

30. You also agreed at your hearing to look into a FISA warrant issued in relation to an investigation into Carter Page.

a. What exactly have you agreed to investigate?

RESPONSE: (b) (5)

b. What evidence do you have to doubt the integrity of a decision made by the Foreign Intelligence Surveillance Court (FISC)?

RESPONSE: (b) (5)

c. Do you think it is wise to launch a politically-motivated investigation into decisions by the FISC?

RESPONSE: (b) (5)

31. If Donald Trump declares a national emergency based on the crisis he has manufactured at the southern U.S. border, will you defend it, should you be confirmed?

RESPONSE: (b) (5)

32. When I asked you at your hearing whether you agreed with former Attorney General Sessions's zero-tolerance policy that resulted in the separation of children from their parents, you replied that you "would have to see what the basis was for those decisions" to determine whether you agreed with the policy and would continue them if you were confirmed.

You then implied that family separations were no longer a problem because the Department of Homeland Security was currently not referring migrant families for prosecution and therefore, the Justice Department's policy of prosecuting all referrals for illegal entry under its zero-tolerance policy would not result in separating families.

a. What more information do you need to know about the zero-tolerance policy that resulted in the separation of more than 2,000 children from their parents in order to determine whether you agree with that policy and whether you would continue it, if confirmed?

RESPONSE: (b) (5)

b. If the Department of Homeland Security changed course again and referred families

for prosecution of illegal entry, would you continue the zero tolerance policy, knowing that it would result in children being separated from their parents?

RESPONSE: (b) (5)

- c. Do you believe that the zero-tolerance policy of prosecuting *all* Department of Homeland Security referrals of illegal reentry is an appropriate use of the Justice Department's limited resources? If yes, will you agree to provide the Senate Judiciary Committee a review of the impact of this policy on federal prosecutions across the Justice Department within 120 days, should you be confirmed?

RESPONSE: (b) (5)

- d. If confirmed, will you continue to implement former Attorney General Sessions's April 11, 2017 memo that directs federal prosecutors to highly prioritize the enforcement of immigration laws?

RESPONSE: (b) (5)

- 33. Former Attorney General Sessions took the unusual action of intervening in an individual asylum application and deciding the case himself as a way of making policy. Mr. Sessions used the case *Matter of A-B* to overturn legal precedent and longstanding policies by significantly restricting the ability of victims of domestic violence and gang violence to obtain asylum relief. A court eventually struck down many of these new policies and ordered the government to bring prior claimants back to the United States who have already been deported so they can pursue their asylum claims.

- a. Should you be confirmed, will you comply with these court orders in a prompt manner?

RESPONSE: (b) (5)

- b. Do you think it is appropriate for an attorney general to intervene in immigration cases in order to set policies that narrow asylum protections that immigration judges have recognized were established by Congress?

RESPONSE: (b) (5)

- 34. As you know, U.S. Immigration Courts operate as a component of the Department of Justice, which creates the possibility that Immigration Judges can be subjected to inappropriate political pressure. Moreover, former Attorney General Jeff Sessions decided to effectively subject Immigration Judges to quotas, which may make it difficult for these judges to review each case fully and fairly.

What is your view of how Immigration Judges ought to be categorized and treated?

RESPONSE: (b) (5)

35. When Sen. Ernst asked you at your hearing about legislation that requires Immigration and Customs Enforcement to detain an undocumented person who is charged with a crime resulting in death or serious injury, you stated that it “sounds like a very commonsensical bill” and “something that [you] would certainly be inclined to support.”

- a. When Donald Trump began separating families at the border he created hundreds of Unaccompanied Alien Children (UAC). These children, including infants, who did not speak English, were expected to represent themselves in court. Last year, I introduced, together with Senator Feinstein, the Fair Day in Court for Kids Act. It would require that legal counsel be provided for every Unaccompanied Alien Child. Studies show that when unaccompanied minors are represented by a lawyer, they are consistently more likely to show up for immigration court – in fact, a 2014 study found that 92.5% of children with counsel attended immigration proceedings. Do you agree that providing children with legal counsel so that a child does not have to appear before a judge alone is commonsensical? Is that something that you would be inclined to support?

RESPONSE: (b) (5)

- b. Last year I introduced the Immigration Courts Improvement Act, which was endorsed by the National Association of Immigration Judges. The bill would eliminate the use of numerical completion goals as a measurement of how judges are doing their job and would insulate them from the Attorney General’s control, treating them like independent decisionmakers rather than as DOJ attorneys. Do you agree that allowing Immigration Judges to act as independent decisionmakers and insulating them from inappropriate political pressure is commonsensical? Is that something that you would be inclined to support?

RESPONSE: (b) (5)

36. In February 2018, the New York Times reported that former Attorney General Sessions had effectively shut down the Justice Department’s Office for Access to Justice, even though he cannot officially close the office without notifying Congress. The purpose of that office is to promote fairness in the justice system and increase access to legal resources for indigent litigants.

- a. If confirmed, what steps will you take to ensure that the justice system is fair for all Americans, regardless of whether they are poor or rich and regardless of their racial or ethnic background?

RESPONSE: (b) (5)

- b. Will you commit to reinstating the Office for Access to Justice by reallocating resources to this office?

RESPONSE: (b) (5)

37. In 2006, you wrote a letter to the Speaker of the House of the Massachusetts legislature to urge increased funding for the Massachusetts Legal Assistance Corporation. Donald Trump has submitted two budgets in a row proposing to defund the Legal Services Corporation. Do you agree with the President's proposal to defund the Legal Services Corporation?

RESPONSE: (b) (5)

38. The Department of Justice and its Office of Juvenile Justice and Delinquency Prevention enforce the Juvenile Justice and Delinquency Prevention Act that was passed in December 2018. The law bans states from holding children in adult jails even if they have been charged with adult crimes.

Is it still your view that chronic or serious juvenile offenders should be treated like an adult and tracked through the traditional criminal justice system? If so, if confirmed, how would you implement the Juvenile Justice and Delinquency Prevention Act?

RESPONSE: (b) (5)

39. In a report you issued as Attorney General laying out 24 recommendations to combat violent crime, you called it a "flawed notion[]" that "success in reforming inmates can be measured by their behavior in prison." Is it still your view? Do you disagree with the approach taken by the First Step Act to expand the use of "good time" credits?

RESPONSE: (b) (5)

40. The Tax Cuts and Jobs Act eliminated the income tax deduction for moving expenses for most people. Accordingly, reimbursements for moving expenses received by federal employees, such as FBI Special Agents who are required to relocate in connection with their service, are now considered income subject to taxation by the IRS. This can result in extra withholding and higher tax liability for government employees.

While the General Services Administration has taken action to give clear authorization for agencies to use the Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) to reimburse most federal employees for their extra tax liability, we are still hearing questions from Justice Department employees about whether the Department is doing everything in its power to offset the increased tax liability being faced by employees.

Given that many Justice Department employees are required to relocate in connection with their work, will you commit to using the WTA and RITA, and taking any other

actions within your power, to provide timely reimbursements for employees who face increased tax liability as a result of reimbursed moving expenses?

RESPONSE: (b) (5)

41. In October 2018, The Washington Post published an article asserting that “Attorney General Jeff Sessions and Solicitor General Noel J. Francisco have repeatedly gone outside the usual appellate process to get issues such as the travel ban, immigration and greater authority for top officials before the justices.” The article argued that they aggressively bypassed the normal process of appealing lower court decisions to circuit courts, and tried to short-circuit the judicial process on the Trump administration’s “signature issues by seeking extraordinary relief from a refortified conservative Supreme Court.”

- a. Do you believe this strategy is proper? Do you think such efforts to repeatedly bypass the normal judicial processes may erode public confidence in the judicial system?

RESPONSE: (b) (5)

- b. Should you be confirmed, will you review the Trump administration’s efforts to bypass the appellate courts and jump directly to the Supreme Court and reconsider this strategy?

RESPONSE: (b) (5)

42. In an op-ed published in The Washington Post on January 10, 2019, a former lawyer in the Justice Department’s Office of Legal Counsel (OLC) wrote:

“[W]hen I was at OLC, I saw again and again how the decision to trust the president failed the office’s attorneys, the Justice Department and the American people. The failure took different forms. Sometimes, we just wouldn’t look that closely at the claims the president was making about the state of the world. When we did look closely, we could give only nudges. For example, if I identified a claim by the president that was provably false, I would ask the White House to supply a fig leaf of supporting evidence. Or if the White House’s justification for taking an action reeked of unconstitutional animus, I would suggest a less pungent framing or better tailoring of the actions described in the order.”

She further explained that she “occasionally caught [her]self fashioning a pretext, building an alibi” for the President’s “impulsive decisions.”

- a. If you are confirmed, what steps will you take to prevent the Office of Legal Counsel from retroactively justifying the President’s decisions or policies based on a pretext or a fig leaf of evidence?

RESPONSE: (b) (5)

- b. If you are confirmed and find that the Office of Legal Counsel has justified the legality of the President's decisions or policies based on a pretext or a fig leaf of evidence, will you agree to report such actions to the Senate Judiciary Committee?

RESPONSE: (b) (5)

43. In a panel at Hastings Law School, you once said of judicial selection, "[o]f course you're picking them for their personal beliefs....I think political philosophy is an important part of what makes a judge."

If confirmed, will you recommend to judicial nominees – who are prepared for their hearings by Justice Department lawyers – that they answer questions posed by Senators about their personal beliefs? If political philosophy is an important part of what makes a judge, why should nominees be reluctant to discuss theirs?

RESPONSE: (b) (5)

44. You also said at that Hastings event that you think the reason the President appoints judges is so the judiciary is "responsive to the popular will." Donald Trump has given a very large role in judicial selection to outside, non-governmental groups. In particular, he has chosen many of his lower court judges, and both of his Supreme Court justices, from a list compiled by the Federalist Society and the Heritage Foundation. Do you think the authors of the Constitution intended the judiciary to be responsive to the will of the Federalist Society and the Heritage Foundation?

RESPONSE: (b) (5)

45. In your written statement, you state, "As Attorney General, my allegiance will be to the rule of law, the Constitution, and the American people." It does not appear that Donald Trump views the role of the Attorney General in that way. From the time he recused himself from the Russia investigation, former Attorney General Jeff Sessions became the target of merciless attacks by Donald Trump. Beginning in the summer of 2017, and continuing to the end of Mr. Sessions's tenure, Donald Trump questioned and mocked him on Twitter. He called Mr. Sessions "weak," "beleaguered," and "disgraceful." He is even reported to have asked his advisors, "Where's my Roy Cohn?" after being "perturbed by Attorney General Jeff Sessions's decision to recuse himself from supervising the investigation into the Trump campaign's relationship with Russia."

- a. Do you think the President agrees with your vision of the Attorney General's duty?
- b. If a conflict arises between your views of the Attorney General's role and that of the President, how will you maintain your allegiance "to the rule of law, the Constitution,

and the American people”?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR BOOKER

1. You testified that, if President Trump ordered you to fire Special Counsel Robert Mueller, you “would not carry out that instruction.”⁶ You have previously made the argument, however, that once the President issues an order, the Attorney General has two options: follow the order or resign.

In a February 2017 op-ed, you said that President Trump was “right” to fire Acting Attorney General Sally Yates for refusing to carry out the President’s first Muslim travel ban.⁷ She had determined the order was unlawful, and so she refused to direct the Justice Department to defend it.⁸ You wrote that Ms. Yates’s action was “unprecedented and must go down as a serious abuse of office.” You added that “neither her policy objection nor her legal skepticism can justify her attempt at overruling the president.” And you noted that “she was free to resign if she disagreed.”

This argument aligns with comments you made in 2006, describing the Attorney General’s constitutional relationship to the President as follows: “That is a presidential function you’re carrying out. If he doesn’t like the way you’re doing it or you don’t like what he’s telling you to do, you resign or he fires you, but it’s his function.”⁹

- a. If President Trump ordered you to fire Special Counsel Mueller without cause, why shouldn’t we expect that you would take the approach you suggested to Acting Attorney General Yates: either carry out the President’s order regardless of any doubts about its propriety or legality, or resign if you fundamentally disagree?
- b. Based on the view that you previously expressed about Acting Attorney General Yates’s situation—follow the President’s order or resign—on what basis would you refuse to carry out an order from President Trump to fire Special Counsel Mueller, as you pledged to this Committee?

⁶ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

⁷ William Barr, *Former Attorney General: Trump Was Right To Fire Sally Yates*, WASH. POST (Feb. 1, 2017), https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html.

⁸ Matt Apuzzo, Eric Lichtblau & Michael D. Shear, *Acting Attorney General Orders Justice Dept. Not To Defend Refugee Ban*, N.Y. TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/attorney-general-civil-rights-refugee.html>.

⁹ MILLER CENTER, UNIV. OF VA., PROCEEDINGS OF THE LLOYD N. CUTLER CONFERENCE ON THE WHITE HOUSE COUNSEL (Nov. 10-11, 2006), in SJQ Attachments to Question 12(d) at 61.

- c. If President Trump demanded the repeal of the Justice Department’s Special Counsel regulations—so that President Trump could try to personally fire Special Counsel Mueller—would you follow that order without questioning whether it was legal or proper?

RESPONSE: (b) (5)

2. On the issue of making Special Counsel Mueller’s report public, you testified that “there are two different reports. . . . [U]nder the current regulations, the special counsel report is confidential. The report that goes public would be a report by the Attorney General.” You also testified: “[T]he regs do say that Mueller is supposed to do a summary report of his prosecutive and his declination decisions, and that they will be handled as a confidential document, as are internal documents relating to any federal criminal investigation. Now, I’m not sure—and then the A.G. has some flexibility and discretion in terms of the A.G.’s report. What I am saying is, my objective and goal is to get as much as I can of the information to Congress and the public. . . . I am going to try to get the information out there consistent with these regulations. And to the extent I have discretion, I will exercise that discretion to do that.”¹⁰
 - a. Do those statements accurately reflect your interpretation of the relevant Special Counsel regulations,¹¹ or do you wish to clarify or amend them in any way?
 - b. Do you believe that, under the regulations, the Attorney General *lacks* the discretion to make Special Counsel Mueller’s report to the Attorney General public?
 - c. Do you believe that, under the regulations, the Attorney General *lacks* the discretion to share Special Counsel Mueller’s findings with the public in some format besides releasing the report itself?
 - d. In determining whether to publicly release Special Counsel Mueller’s report or other such information, would you apply the legal standard contained in the regulations— namely, whether public release “would be in the public interest”?¹²

RESPONSE: (b) (5)

3. In a July 2017 interview, you said that you “would have liked to see [Special Counsel

¹⁰ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

¹¹ 28 C.F.R. § 600.8-9.

¹² *Id.* § 600.9(c).

Mueller] have more balance” among the attorneys he had hired.¹³ Do you think it is appropriate to ask prosecutors about their political views before assigning them to a case?

RESPONSE: (b) (5)

4. President Trump has said, “I have absolute right to do what I want to do with the Justice Department.”¹⁴ Do you agree?

RESPONSE: (b) (5)

5. Presumably you are aware of the many public attacks President Trump has made against Special Counsel Mueller, his team, and his investigation.

A couple of decades ago, when an Independent Counsel was investigating the President, you coauthored an op-ed with other former Attorneys General to express concern about what you described as “attacks” on the Independent Counsel and his office “by high government officials and attorneys representing their particular interests.”¹⁵

- a. Would you apply the same words to the present situation, and affirm that Special Counsel Mueller “should be allowed to carry out his or her duties without harassment by government officials and members of the bar”?¹⁶
- b. Again applying the same words to the present situation, are you in any way “concerned that the severity of the attacks” on Special Counsel Mueller and his team “by high government officials and attorneys representing their particular interests . . . appear to have the improper purpose of influencing and impeding an ongoing criminal investigation”?

RESPONSE: (b) (5)

6. In May 2017, you published an op-ed arguing that President Trump was “right” to fire FBI Director James Comey. You wrote, “Comey’s removal simply has no relevance to the integrity of the Russian investigation as it moves ahead.”¹⁷

¹³ Matt Zapotosky, *As Mueller Builds His Russia Special-Counsel Team, Every Hire Is Under Scrutiny*, WASH. POST (July 5, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/07/05/as-mueller-grows-his-russia-special-counsel-team-every-hire-is-under-scrutiny>.

¹⁴ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. ‘Look Very Bad,’* N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/us/politics/trump-interview-mueller-russia-china-north-korea.html>.

¹⁵ Griffin B. Bell, Edwin Meese III, Richard L. Thornburgh & William P. Barr, *Let Starr Do His Job*, WALL ST. J. (Mar. 11, 1998), <https://www.wsj.com/articles/SB889562359714297500>.

¹⁶ *Id.*

¹⁷ William Barr, *Former Attorney General: Trump Made the Right Call on Comey*, WASH. POST (May 12, 2017), https://www.washingtonpost.com/opinions/former-attorney-general-trump-made-the-right-call-on-comey/2017/05/12/0e858436-372d-11e7-b4ee-434b6d506b37_story.html.

Presumably you are aware of public reports that President Trump told Russian officials in the Oval Office, the day after he fired Mr. Comey, that he “faced great pressure because of Russia” that was “taken off” by firing him.¹⁸ Presumably you are also aware that, in a nationally televised interview, President Trump said that at the moment he decided to fire Mr. Comey, he was thinking, “This Russia thing with Trump and Russia is a made-up story.”¹⁹

In light of these remarks by President Trump, and knowing what you know today, do you still believe that his firing of Director Comey had “no relevance to the integrity of the Russian investigation”?

RESPONSE: (b) (5)

7. During your time in private practice, have you represented any foreign governments, or any organization that represents a foreign government’s interests? If so, please specify to the extent permissible any such governments or organizations.

RESPONSE: (b) (5)

8. It has been reported that, after President Trump offered you the Attorney General position, you “briefly” told him that your June 2018 memo about Special Counsel Mueller’s investigation and obstruction of justice could become an issue at your confirmation hearing.²⁰
 - a. What did you tell President Trump about the June 2018 obstruction memo?
 - b. How did President Trump respond?

RESPONSE: (b) (5)

9. In December 1992, President Bush pardoned six Reagan Administration officials implicated in the Iran-Contra affair. In an interview nine years later, you recalled your role in this decision: “I went over and told the President I thought he should not only pardon [former Secretary of Defense] Caspar Weinberger, but while he was at it, he should pardon about five others. . . . There were some people arguing just for Weinberger, and I said, ‘No, in for a penny, in for a pound.’”²¹

¹⁸ Matt Apuzzo, Maggie Haberman & Matthew Rosenberg, *Trump Told Russians That Firing ‘Nut Job’ Comey Eased Pressure From Investigation*, N.Y. TIMES (May 19, 2017), <https://www.nytimes.com/2017/05/19/us/politics/trump-russia-comey.html>.

¹⁹ Linda Qiu, *Did Trump Fire Comey Over the Russia Inquiry or Not?*, N.Y. TIMES (May 31, 2018), <https://www.nytimes.com/2018/05/31/us/politics/fact-check-trump-fire-comey-russia.html>.

²⁰ Sadie Gurman & Aruna Viswanatha, *Trump’s Attorney General Pick Criticized an Aspect of Mueller Probe in Memo to Justice Department*, WALL ST. J. (Dec. 19, 2018), <https://www.wsj.com/articles/trumps-attorney-general-pick-criticized-an-aspect-of-mueller-probe-in-memo-to-justice-department-11545275973>.

²¹ William P. Barr *Oral History: Transcript*, MILLER CTR., UNIV. OF VA. (Apr. 5, 2001), <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.

- a. If President Trump told you that he was considering pardoning members of his Administration, campaign staff, or other associates—or even himself—in matters relating to Special Counsel Mueller’s investigation, would you give him the same advice now: “In for a penny, in for a pound”?
- b. Do you believe there are any specific limits on the President’s pardon power, aside from what is spelled out in the text of the Constitution? If so, what are those limits?

RESPONSE: (b) (5)

10. During your nominations hearing you assured me that you would “vigorously enforce the Voting Rights Act.”²² What actions are you planning to take to “vigorously enforce the Voting Rights Act”?

RESPONSE: (b) (5)

11. According to the Justice Department’s website, the Civil Rights Division has filed *no* lawsuits to enforce Section 2 of the Voting Rights Act since President Trump took office. By comparison, the Civil Rights Division filed 5 such suits under President Obama, 15 under President George W. Bush, and 16 under President Clinton. The Department’s website also does not list any Section 2 suits from the periods when you served as Attorney General and Deputy Attorney General under President George H.W. Bush.²³
 - a. Do you believe vigorous enforcement of the voting laws, as you pledged in your testimony, includes vigorous enforcement of Section 2 of the Voting Rights Act?

RESPONSE: (b) (5)

- b. In 2017, the Department of Justice reversed the federal government’s position in *Veasey v. Perry*, which involved a challenge to what is often considered to be the nation’s strictest state voter ID law.²⁴ The reversal came after almost six years of arguing that the Texas voter ID law intentionally discriminated against minorities.²⁵ Even the Fifth Circuit Court of Appeals, one of the most conservative circuits in the nation, ruled that the Texas voter ID law discriminated against minority voters.²⁶

²² *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

²³ *Civil Rights Division: Voting Section Litigation*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/crt/voting-section-litigation> (last visited Jan. 17, 2019); see Ian Millhiser, *DOJ’s Civil Rights Division Has Not Filed a Single Voting Rights Act Case Since Trump Took Office*, THINKPROGRESS (Nov. 5, 2018), <https://thinkprogress.org/civil-rights-division-has-not-filed-a-single-voting-rights-act-case-under-trump-792914a2689a>.

²⁴ Pam Fessler, *Justice Department Reverses Position on Texas Voter ID Law Case*, NPR (Feb. 27, 2017), <https://www.npr.org/2017/02/27/517558469/justice-department-reverses-position-on-texas-voter-id-law-case>.

²⁵ *Id.*

²⁶ See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

- i. Will you make a commitment to review the Department of Justice's position in this case?

RESPONSE: (b) (5)

- ii. Will you report your conclusions to this Committee within the first 90 days of your tenure should you be confirmed?

RESPONSE: (b) (5)

12. Since the Supreme Court's decision in *Shelby County v. Holder*,²⁷ states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate a voter at the polls.²⁸ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.²⁹ Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?
- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?
- c. Do you believe that voter ID laws can disenfranchise otherwise eligible minority voters?
- d. Please provide an example of a voter ID law that you believe disenfranchises otherwise eligible minority voters.

RESPONSE: (b) (5)

13. In the twenty-first century, voter ID laws are often considered the modern-day equivalent of poll taxes. These laws disproportionately disenfranchise people of color and people of

²⁷ 570 U.S. 529 (2013).

²⁸ Justin Levitt, *The Truth About Voter Fraud*, BRENNAN CTR. FOR JUSTICE 6 (2007), <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

²⁹ Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast>.

lesser means.³⁰

- a. Do you agree that voter ID laws disproportionately disenfranchise people of color and people of lesser means?
- b. Study after study has shown that in-person voter fraud is extremely rare.³¹ Do you believe that in-person voter fraud is a widespread problem in American elections?

RESPONSE: (b) (5)

14. On January 3, 2019, the *Washington Post* reported that the Trump Administration is considering an expansive rollback of federal civil rights law.³² According to the article, “A recent internal Justice Department memo directed senior civil rights officials to examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be, according to people familiar with the matter.”³³

- a. Do you believe that actions that amount to discrimination, but that have no provable discriminatory intent, should be prohibited under federal civil rights law? In other words, is disparate impact a valid way to demonstrate discrimination?
- b. If you don’t believe disparate impact is a valid way to demonstrate discrimination, how do you propose to remedy actions that have a disparate impact on minorities?
- c. If confirmed as Attorney General, do you commit to halt this effort to rollback disparate impact regulations?

RESPONSE: (b) (5)

15. In January 2018, Attorney General Sessions rescinded the Cole Memorandum, which provided guidance to U.S. Attorneys that the federal marijuana prohibition should not be

³⁰ See, e.g., Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You’re Poor, Black, Latino or Elderly*, Wash. Post (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html; Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355>.

³¹ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

³² Laura Meckler & Devlin Barrett, *Trump Administration Considers Rollback of Anti-discrimination Rules*, WASH. POST (Jan. 3, 2019), https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874f1ac36_story.html.

³³ *Id.*

enforced in states that have legalized marijuana in some way or another.³⁴ When I asked you about this issue in your testimony last week, you stated: “My approach to this would be not to upset settled expectations and the reliance interests that have arisen as a result of the Cole Memorandum—and investments have been made, and so there’s been reliance on it, so I don’t think it’s appropriate to upset those interests. However, I think the current situation is untenable and really has to be addressed. It’s almost like a backdoor nullification of federal law. . . . I’m not going to go after companies that have relied on the Cole Memorandum. However, we either should have a federal law that prohibits marijuana everywhere—which I would support myself, because I think it’s a mistake to back off on marijuana. However, if we want a federal approach, if we want states to have their own laws, then let’s get there, and let’s get there the right way.”³⁵

- a. Do you intend to rescind Attorney General Sessions’s January 2018 memorandum on marijuana enforcement, either in part or in its entirety?
- b. Do you intend to reinstate the Cole Memorandum?

RESPONSE: (b) (5)

16. On May 10, 2017, Attorney General Sessions changed the Department of Justice’s charging and sentencing policy and directed all federal prosecutors to “pursue the most serious, readily provable offense.”³⁶ After this announcement, I wrote a letter with Senators Mike Lee, Dick Durbin, and Rand Paul asking a series of question regarding the policy change because we believed the new policy would “result in counterproductive sentences that do nothing to make the public safer.”³⁷
- a. If confirmed, will you review Attorney General Sessions’ decision to revert back to an old Department of Justice policy to “pursue the most serious, readily provable offense”?
 - b. Will you make a commitment to conduct a review of the effect the new charging and sentencing policy is having on crime deterrence, public safety, and reducing recidivism and report your findings to the Senate and House Judiciary Committees?
 - c. The letter referenced above highlighted the cases of Weldon Angelos and Alton Mills.³⁸ Do you believe the punishment fit the crime in those two

³⁴ Memorandum from Jeff Sessions, Att’y Gen., to All U.S. Att’ys on Marijuana Enforcement (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.

³⁵ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

³⁶ Memorandum from Jeff Sessions, Att’y Gen., to the U.S. Dep’t of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

³⁷ Letter from Sen. Mike Lee et al. to Jeff Sessions, Att’y Gen., on the Department of Justice Charging and Sentencing Policy (June 7, 2016), <https://www.scribd.com/document/350652153/6-7-17-Letter-to-the-Attorney-General-on-DOJ-Charging-and-Sentencing-Policy-FINAL-SIGNED>.

³⁸ *Id.*

cases?

- d. If you are not familiar with those cases, do you commit to have the Department of Justice respond to the May 2017 letter regarding whether it believed the punishment fit the crime in those two instances?
- e. Will you make a commitment to conduct a review of all federal criminal offenses carrying mandatory minimum sentences and reporting to the Senate and House Judiciary Committees those that you believe are unfair and need adjustment?
- f. According to Attorney General Sessions's memorandum, "prosecutors are allowed to apply for approval to deviate from the general rule that they must pursue the most serious, readily provable offense."³⁹ Do you commit to providing the Senate and House Judiciary Committees information detailing the number of requests that have been made to deviate from the Department's charging policy and a breakdown of whether those requests were approved or denied?

RESPONSE: (b) (5)

17. In 2015, the Presidential Task Force on 21st-Century Policing issued a report setting forth recommendations focused on identifying best practices for policing and recommendations that promote effective crime reduction while building public trust.⁴⁰ Have you read the report? If not, do you intend to read the report?

RESPONSE: (b) (5)

18. Communities of color have the lowest rates of confidence in law enforcement. A poll from 2015-2017 indicated that 61 percent of whites had confidence in police, only 45 percent of Hispanics and 30 percent of blacks felt the same way.⁴¹ If confirmed as Attorney General, what policies and practices will you implement to rebuild trust between law enforcement and minority communities?

RESPONSE: (b) (5)

19. In the period leading up to Operation Desert Storm in the Gulf War, the FBI engaged in questioning of hundreds of Arab-American business and community leaders, on the asserted basis of collecting intelligence about possible terrorist threats. As Deputy Attorney General at the time, you said: "These interviews are not intended to intimidate. . . . The interviews are an opportunity to keep an open channel of communication with people

³⁹ Memorandum from Jeff Sessions, Att'y Gen., to the U.S. Dep't of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

⁴⁰ FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST-CENTURY POLICING (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁴¹ Jim Norman, *Confidence in Police Back at Historical Average*, GALLUP (July 10, 2017), <https://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx>.

who may be victimized if hostilities occur. At the same time, in the light of the terrorist threats . . . it is only prudent to solicit information about potential terrorist activity and to request the future assistance of these individuals.”⁴² Some community activists and others who had undergone questioning said the FBI interviews felt like “intimidation”⁴³ or “harassment.”⁴⁴

- a. Do you believe that racial profiling is wrong?
- b. Do you believe that racial profiling is an ineffective use of law enforcement resources? If not, please explain why.

RESPONSE: (b) (5)

20. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.⁴⁵ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁴⁶ These shocking statistics are reflected in our nation’s prisons and jails.⁴⁷ Blacks are five times more likely than whites to be incarcerated in state prisons. In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴⁸

- a. Do you believe there is implicit racial bias in our criminal justice system?
- b. Do you believe people of color are disproportionately represented in our nation’s jails and prisons?
- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

RESPONSE: (b) (5)

21. According to Pew Charitable Trusts, in the 10 states with the largest declines in their

⁴² Sharon LaFraniere, *FBI Starts Interviewing Arab-American Leaders*, WASH. POST (Jan. 9, 1991), <https://www.washingtonpost.com/archive/politics/1991/01/09/fbi-starts-interviewing-arab-american-leaders/2c89a03e-d9c5-491a-981a-08726fdcd273>.

⁴³ *Id.*

⁴⁴ Paul Hendrickson, *Caught in the Middle: Detroit’s Arab Americans*, WASH. POST (Feb. 15, 1991), <https://www.washingtonpost.com/archive/lifestyle/1991/02/15/caught-in-the-middle-detroits-arab-americans/e2e6721c-7007-432b-a806-c0770467dac4>.

⁴⁵ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

⁴⁶ *Id.*

⁴⁷ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁴⁸ *Id.*

incarceration rates, crime fell by an average of 14.4 percent.⁴⁹ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.⁵⁰

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.
- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

RESPONSE: (b) (5)

22. Do you believe it is an important goal for there to be demographic diversity among law enforcement personnel? If not, please explain your views.

RESPONSE: (b) (5)

23. In 1992, you were asked about a proposal to build a border wall along the U.S.-Mexico border. You described that border wall proposal as “overkill.”⁵¹ In fact, you said “I don’t think it’s necessary. I think that’s overkill to put a barrier from one side of the border to the other.”⁵² You then said, “In fact, the problem with illegal immigration across the border is really confined to major metropolitan areas. Illegal immigrants do not cross in the middle of the desert and walk hundreds of miles.”⁵³

At the time you made those comments in 1992, there were more than 1.1 million border apprehensions the previous fiscal year.⁵⁴ In Fiscal Year 2017, there were around 304,000.⁵⁵ That’s about an 800,000 drop in border apprehensions—a decline of about 73 percent.

Simultaneously, there have been significant increases in the amount of money spent on border enforcement. In 1992, \$326 million was spent on the U.S. Border Patrol’s

⁴⁹ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

⁵⁰ *Id.*

⁵¹ Eric Tucker, *Trump’s Pick for AG Once Questioned Value of Border Wall*, ASSOCIATED PRESS (Dec. 31, 2018), <https://www.apnews.com/01712e03bb324664b870cc74cc2f9c8d>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ U.S. Border Patrol, *Southwest Border Sectors: Total Illegal Alien Apprehensions by Fiscal Year*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf> (last visited Jan. 16, 2019).

⁵⁵ *Id.*

budget.⁵⁶ Now, \$3.8 billion is appropriated to U.S. Border Patrol to secure our borders.⁵⁷

- a. Do you still believe building a border wall along the U.S.-Mexico border in 1992 was “overkill”?
- b. Do you believe building a border wall along the entire U.S.-Mexico border wall now is “overkill”?
- c. In 1992, during President George H.W. Bush’s administration, did you believe the United States was experiencing a “crisis” at the border?
- d. Do you believe the United States is experiencing a “crisis” at the U.S.-Mexico border now as President Donald Trump claims?
- e. Since 1986, what years would you characterize the situation at the border as “stable”?

RESPONSE: (b) (5)

24. While you were Attorney General during the Bush Administration, you hired 200 additional Immigration and Naturalization investigators and created the National Criminal Alien Tracking Center to “combat illegal immigration and violent crime by criminal aliens.”⁵⁸ Also, during a 1992 interview with the *Los Angeles Times*, you appeared to partially hold undocumented immigrants accountable for the riots following the acquittal of law enforcement officers in the beating of Rodney King. You said, “The problem of immigration enforcement—making sure we have a fair set of rules and then enforce them—I think that’s certainly relevant to the problems we’re seeing in Los Angeles. . . . I think there was anger and frustration over the verdict in the Rodney King⁵⁹ incident that certainly wasn’t limited to Los Angeles, but I do think that there were a lot of unique circumstances in Los Angeles that came together in a way that added to the combustibility of the post-verdict hours and contributed to the intensity and the scale of the violence in Los Angeles.”⁶⁰

- a. Do you believe that immigrants—whether they are documented or undocumented— are prone to criminality?

⁵⁶ *The Cost of Immigration Enforcement and Border Security*, AM. IMMIGRATION COUNCIL 2 (Jan. 25, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf.

⁵⁷ *Id.*

⁵⁸ *Department of Justice Authorization for Fiscal Year 1993 Before the Senate Committee on the Judiciary*, 103d Cong. (1992) (statement of William P. Barr, Att’y Gen.), <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/06-30-1992.pdf>.

⁵⁹ Ronald J. Ostrow, *William Barr: A ‘Caretaker’ Attorney General Proves Agenda-Setting Conservative*, L.A. TIMES (June 21, 1992), http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general/2.

⁶⁰ *Id.*

- b. If you believe that immigrants are prone to criminality, what studies are you relying on in making that judgment?

RESPONSE: (b) (5)

25. In 2018, the Cato Institute, a libertarian think tank, issued a study that found that immigrants who entered the United States legally were 20 percent less likely to be incarcerated as native-born Americans.⁶¹ The research also found that undocumented immigrants were half as likely to be incarcerated as native-born Americans.⁶² Do you have any reason to doubt the findings of this research?

RESPONSE: (b) (5)

26. On April 6, 2018, Attorney General Sessions announced a “zero tolerance” policy for criminal illegal entry and directed each U.S. Attorney’s Office along the Southwest Border to adopt a policy to prosecute all Department of Homeland Security referrals “to the extent practicable.”⁶³ A month later, on May 7, 2018, the Trump Administration announced that the Department of Homeland Security will refer any individuals apprehended at the Southwest Border to the Department of Justice.⁶⁴ This policy resulted in thousands of immigrant children being cruelly separated from their parents.⁶⁵

- a. Do you agree with Attorney General Sessions’s decision to institute a “zero tolerance” policy?
- b. Do you believe it is humane to separate immigrant children and their parents after they are apprehended at the U.S.-Mexico border?
- c. Will you make a commitment not to reinstitute a “zero tolerance” policy or anything resembling the policy?

RESPONSE: (b) (5)

27. On September 27, 2016, I sent a letter to then-Secretary Jeh Johnson opposing family

⁶¹ Alex Nowrasteh, *Immigration and Crime—What the Research Says*, CATO INST. (July 14, 2015), <https://www.cato.org/blog/immigration-crime-what-research-says>.

⁶² *Id.*

⁶³ Press Release, U.S. Dep’t of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

⁶⁴ Jeff Sessions, Att’y Gen., Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

⁶⁵ Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX (June 15, 2018) <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

detention and urging the Obama Administration to end its use of the practice.⁶⁶ The letter said, “Detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means.”⁶⁷ The letter also noted that “[t]here is strong evidence and broad consensus among health care professionals that detention of young children, particularly those who have experienced significant trauma as many of these children have, is detrimental to their development and physical health.”⁶⁸

- a. Do you agree that detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means?
- b. Do you believe that detention of children—regardless of whether it is with or without their parents—has a detrimental effect on their development and physical health?

RESPONSE: (b) (5)

28. Attorney General Sessions made it virtually impossible for victims of domestic violence or gang violence to seek asylum in the United States.⁶⁹ He did so by personally intervening in an asylum application of a woman who was a victim of domestic violence at the hands of her husband.⁷⁰ He used her case to disqualify entire categories of claims that were legitimate grounds for asylum.⁷¹

- a. Do you believe being a victim of domestic violence should be a valid reason for seeking asylum in the United States?
- b. Do you believe being a victim of gang violence should be a valid reason for seeking asylum in the United States?
- c. Do you commit to reversing Attorney General Sessions’s decision invalidating domestic violence or gang violence as grounds for claiming asylum?

RESPONSE: (b) (5)

29. Census experts and senior Census Bureau staff agree that a last-minute, untested citizenship question could create a chilling effect and present a major barrier to

⁶⁶ Letter from Sen. Patrick Leahy et al. to Jeh Johnson, Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 27, 2016), <https://www.leahy.senate.gov/imo/media/doc/Letter%20to%20Sec.%20Johnson%20re%20Berks%20Family%20Detention%20Center.pdf>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Katie Benner & Caitlin Dickerson, *Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum*, N.Y. TIMES (June 11, 2018), <https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>.

⁷⁰ *Id.*

⁷¹ *Id.*

participation in the 2020 Census. Many vulnerable communities do not trust the federal government's commitment to maintaining the confidentiality of Census data and are fearful that their responses could be used for law enforcement, including immigration enforcement, purposes. A citizenship question would exacerbate their concerns.

Alarming documents revealed in the ongoing citizenship question litigation indicate that DOJ staff were open to reevaluating a formal Justice Department legal opinion from 2010 that there are no provisions within the USA PATRIOT Act that can be used to compel the Commerce Secretary to release confidential census information—that is, that supersede the strict confidentiality protections in the Census Act. In November, I joined my colleagues Senator Schatz and Senator Reed in a letter to Assistant Attorney General Eric Dreiband, seeking a clarification of the existing law, a commitment to maintaining the confidentiality of information collected by the Census Bureau, and assurances that personal Census responses cannot be used to the detriment of any individual or family, by the Justice Department, the Department of Homeland Security, or any other agency of government at any level.

Although litigation has continued for months, a federal district court—last Tuesday, the same day you appeared before this Committee—issued an exceptionally thorough and thoughtful ruling that blocked the Commerce Department from adding the citizenship question to the Census.

- a. When you were asked at the hearing about the Trump Administration's position in this case, you answered, "I have no reason to change that position."⁷² What circumstances would lead you to reconsider the Justice Department's defense of the Administration's position concerning the addition of the citizenship question to the Census?
- b. Do you agree that the confidentiality of Census data is fully protected by law?
- c. Will you make a commitment that, if confirmed, you will ensure the Justice Department abides by all laws protecting the confidentiality and nondisclosure of Census data, and that you will prohibit the use of Census data for the purposes of immigration-related enforcement against any person or family?
- d. Will you make a commitment that, if confirmed, you will reaffirm the Office of Legal Counsel's interpretation that the USA PATRIOT Act does not weaken or change any confidentiality protection embodied in the Census Act?

RESPONSE: (b) (5)

30. Across the economy, the largest companies are taking over an ever greater share of the market—conducting mergers, acquiring other companies, and squeezing smaller

⁷² *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

competitors out. According to a 2016 study from the Levy Economics Institute at Bard College, the years between 1990 and 2013 saw the most sustained period of merger activity in American corporate history, with the concentration of corporate assets more than doubling during this period. The same study also found that the 100 largest companies in the United States now control one-fifth of all corporate assets. Another survey analyzed hundreds of U.S. industries and found that the top four companies in each industry expanded their share of revenues from 26 percent of the industry total in 1997 to 32 percent in 2012. The upshot is that competition is falling, prices are rising, and wages are stagnant.⁷³

- a. Do you believe that corporate concentration is a problem in the U.S. economy? If so, what measures would you consider taking through the Department of Justice's antitrust authorities to address that problem?
- b. Given the race to consolidate that is occurring in many industries, will the Justice Department on your watch engage in rigorous scrutiny, heed all applicable antitrust laws, and if necessary reject mergers that will cut down competition and hurt consumers?
- c. In your estimation, at what point does market concentration become excessive?
- d. If the evidence shows that a merger will lead to an increase in the prices consumers pay, do you believe that such a merger would promote the public interest?
- e. To take one example, the agriculture sector has become increasingly highly concentrated, favoring the interests of major corporations and squeezing small family farmers. Today 65 percent of all pork, 53 percent of all chicken, and 84 percent of all beef is slaughtered by just four companies.⁷⁴ Small family farmers often confront a hard choice: try to compete with huge corporations, or work for them through starkly one-sided contracts. Do you believe that corporate concentration in American agriculture should be the subject of careful regulatory scrutiny?

RESPONSE: (b) (5)

⁷³ See Cory Booker, *The American Dream Deferred*, BROOKINGS INST. (June 2018), <https://www.brookings.edu/essay/senator-booker-american-dream-deferred>.

⁷⁴ Leah Douglas, *Consolidation Is Eating Our Food Economy*, NEW AM. (May 5, 2016), <https://www.newamerica.org/weekly/122/consolidation-is-eating-our-food-economy>

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR HARRIS

1. At your confirmation hearing, you agreed to follow the Special Counsel regulations in your handling of Robert Mueller's investigation into Russian interference in the 2016 election. Among other things, those regulations require the Attorney General to notify the House and Senate Judiciary Committees, with an explanation for each action upon conclusion of the Special Counsel's investigation.
 - a. If confirmed, will you commit to working with Mr. Mueller to ensure that he agrees with the representations, descriptions, and summaries in your report(s) to Congress?
 - b. If confirmed, will you commit to working with Mr. Mueller to ensure that he agrees with any decision to withhold information from Congress, whether for privilege or otherwise?

RESPONSE: (b) (5)

The regulations also state that the Attorney General may publicly release the Special Counsel's report, if release is in the public interest and to the extent that release complies with applicable legal restrictions.

- c. If confirmed, what facts and principles will guide your decision about whether or not to publicly release the Special Counsel's report?

RESPONSE: (b) (5)

2. In August 2017, the Justice Department began investigating Harvard University for its affirmative action policies. One year later, the Justice Department filed a statement of interest in a federal case opposing Harvard University's affirmative action policies.
 - a. As a practical matter, do you believe that educational institutions are likely to be able to achieve meaningful racial diversity without recognizing and taking account of race?

RESPONSE: (b) (5)

From: [Wong, Candice \(CRM\)](#)
To: [Escalona, Prim F. \(OLA\)](#); (b) (6) (OLA); (b) (6) (OLA)
Cc: [Wroblewski, Jonathan \(CRM\)](#); [Brink, David \(CRM\)](#)
Subject: CRM QFRs
Date: Friday, April 19, 2019 1:22:00 PM
Attachments: [Rosen QFRs Master Document CRM.docx](#)

All, attached is the master doc including CRM's QFRs. (b) (5) Per CRM

Thanks,
Candice

Candice C. Wong
Senior Counsel to the Assistant Attorney General, Criminal Division
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From: Escalona, Prim F. (OLA)
Sent: Monday, April 15, 2019 1:27 PM
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Subject: DAG-nominee QFRs

All,
As you likely know, Jeff Rosen, the nominee for Deputy Attorney General, had his confirmation hearing before the Senate Judiciary Committee last Wednesday. The record remains open until this

Wednesday, April 17th, for Senators to submit Questions for the Record (QFRs). We expect to receive the QFRs on Wednesday evening. We will need your component's assistance with drafting QFR responses. I have included some logistical details below with more to follow on Wednesday. I am reaching out to you because you assisted with AG Barr's QFRs. However, if there is someone else in your component who will be the point-of-contact for this set of QFRs, please let me know by COB tomorrow.

- We will send the QFRs to this group at some point Wednesday night. I expect it to be in the wee hours, so you will have it first thing Thursday morning.
- We will need responses back to me no later than **EOD on Friday, April 19**. [Please let me know if this timing is a problem.]
- Please remember that you are drafting responses for a nominee who is not currently in the Department. Therefore, please do not include information that would be unknown to him.
- Late Wednesday night/Thursday morning, you will receive an email from me with the following items:
 - A Word document containing the QFRs and a space for responses that has the assigned component identified in red.
 - A spreadsheet listing all of your assigned QFRs.
 - The hearing transcript
- **This is critical:** if you are assigned a QFR that does not fall within your component, please email me ASAP so that I can properly reassign. I will do my absolute best to get them to the right people/components at the outset, but I am confident that I won't be batting 1000. I really appreciate your help when that happens!
- Additionally, there are likely going to be QFRs that cross a number of components. If that happens, I will list all of the relevant components that I know of in Red in the QFR document. Please coordinate with the folks on this email to ensure that the final answer addresses every component's equities and concerns. If you are aware that a question involves a component that I have not listed, please work with the component to draft a complete response.

Thank you all so much for your help. I know that this is an incredibly heavy lift, and I can't tell you how much we appreciate your help.

Best,
Prim

Prim Escalona
Principal Deputy Assistant Attorney General
Office of Legislative Affairs

(b) (6)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR GRASSLEY

1. You answered a number of questions at the hearing on April 10, 2019 about the First Step Act and the Justice Department's role in its implementation. You also stated in your written testimony that "[w]e will work together to implement the President's and Congress's bipartisan goal, enshrined in the First Step Act, of giving Americans convicted of certain offenses another chance at a productive life." Part of this law requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will lead to more inmates being placed in prerelease custody, such as residential reentry centers (RRCs). In order for RRCs to function and promote the goal of recidivism, they must be appropriately funded. How does the Justice Department plan to implement this provision in order to ensure that there is enough space in RRCs to meet the needs of prisoners who qualify through earned and good time credits for prerelease custody?

RESPONSE: (b) (5)

A large black rectangular redaction box covers the entire response to the first question.

2. The First Step Act requires that all inmates have access to evidence-based recidivism reduction programs. You stated during the hearing that one of the best ways to reduce the reentry of incarcerated individuals is through "programming for prisoners and . . . particularly job-related training."
 - a. As Deputy Attorney General, how will you ensure the availability of programming to inmates? Specifically, how will you make sure that job-related training and programming is implemented?

RESPONSE: (b) (5)

A large black rectangular redaction box covers the entire response to the second question, part (a).

- b. Do you plan to partner with faith-based groups in developing and offering programs to inmates? If so, please provide information as to why and how they will be used in this area.

RESPONSE: (b) (5)

3. As usual, I have a long list of outstanding oversight requests that the Justice Department and FBI have failed to respond to. I have a number of outstanding requests related to the Clinton, Uranium One, and Russia investigations that I started years ago. In addition, I've been doing oversight of the FBI's handling of the USA Gymnastics investigation for over a year. I've still not received a briefing I requested in February 2018 or a response to a letter I sent in July 2018. Congressional oversight is a constitutional responsibility and the Justice Department has an obligation to be responsive to all congressional inquiries.
- a. Do you understand that if you are confirmed, you will have an obligation to ensure that the Justice Department and FBI respond to congressional inquiries in a timely manner?

RESPONSE: (b) (5)

- b. Do you understand that this obligation applies regardless of whether a member of Congress is a committee chairman?

RESPONSE: (b) (5)

4. Whistleblowers are critical to exposing government waste, fraud and abuse. They are our eyes and ears on the ground, and their courage to come forward and expose government malfeasance benefits us all. Will you commit to protecting whistleblowers from retaliation, and to promoting a culture that values their important contributions?

RESPONSE: (b) (5)

5. In 1986, President Reagan signed into law some very important amendments to the False Claims Act. Since those 1986 amendments, the government has recovered more than \$59 billion in taxpayer money. Most of that is because of whistleblowers who found the fraud and brought the cases at their own risk.

- a. If confirmed, will you vigorously support and enforce the False Claims Act?

RESPONSE: (b) (5)

- b. If confirmed, will you continue current staff and funding levels to properly support and prosecute False Claims Act cases?

RESPONSE: (b) (5)

- 6. A new guidance document developed by the Justice Department last year, known as the “Granston memo,” provides a long list of reasons that the Department can use to dismiss False Claims Act cases. Some of them are pretty vague, such as “preserving government resources.” Of course the government can dismiss obviously meritless cases. But even when the Justice Department declines to participate in a False Claims Act case, the taxpayer can and in many cases still does recover financially. So it’s important to let whistleblowers pursue cases even when the Justice Department isn’t able to be involved.

- a. Under what circumstances can, or should, the Justice Department move to dismiss a False Claims Act case?

RESPONSE: (b) (5)

- b. In circumstances where the government does not intervene in a False Claims Act case, if confirmed, will you commit to ensuring that the Justice Department does not unnecessarily dismiss False Claims Act cases?

RESPONSE: (b) (5)

- 7. Deputy Attorney General Rosenstein personally agreed to provide the Judiciary Committee equal access to documents produced to the U.S. House of Representatives, including those pursuant to requests and subpoenas from the Select Committee on Intelligence related to 2016 election controversies. Will you commit to the same equal access agreement?

RESPONSE: (b) (5)

- 8. In 2018, the Justice Department announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it’s the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it’s important that the Department continue its investigative and oversight work. If confirmed, will you work with the Attorney General to ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?

RESPONSE: (b) (5)

9. In February 2018, then-Associate Attorney General Rachel Brand announced that the Justice Department would begin reviewing the fairness of class action settlements, pursuant to the Attorney General's authority under the Class Action Fairness Act of 2005—a bill on which I was the lead sponsor. Congress passed the Class Action Fairness Act with bipartisan support to push back against certain abuses in the class action system, particularly where lawyers were cashing in at the expense of class members. I was pleased to hear that the Department began exercising its review authority under CAFA last year by filing statements of interest where certain proposed settlements appeared unfair to class members. If confirmed, will you work with the Attorney General to ensure the Department continues this work in protecting class members from unfair settlements?

RESPONSE: (b) (5)

10. Every day, the Americans with Disabilities Act protects countless individuals with disabilities, ensuring physical access to “any place of public accommodation.” For this critically important law to be effective, however, it must be clear so that law abiding Americans can faithfully follow the law. Currently, there is confusion over whether the ADA applies to websites, and if so, what standards should be used to determine website compliance. This lack of clarity benefits only the trial lawyers, and does nothing to advance the cause of accessibility.
- a. If confirmed, will you commit to promptly take all necessary and appropriate actions—including filing statements of interest in pending litigation—to help resolve the current uncertainty?

RESPONSE: (b) (5)

- b. More broadly, what other steps will you recommend the Department take to combat abusive litigation practices under the ADA?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR TILLIS

1. Mr. Rosen, earlier this year I sent a letter to the Executive Office for United States Attorneys expressing my support for the allocation of additional funding for the Middle District of North Carolina's United States Attorney's Office to hire additional prosecutors that are needed to address the dramatic increase in organized crime activity in the Middle District. If confirmed, will you commit to looking into this issue and working with me to increase funding for the Middle District?

RESPONSE: (b) (5)

2. Senator Feinstein and I have been working together this past year on the issue of international parental child abduction. In March, we wrote a letter to Attorney General Barr regarding the Department's efforts to combat international parental child abduction. Will you commit to increasing prosecutions under the International Child Crime Kidnapping Act and to training federal law enforcement on how this tool can be used to secure the return of American citizen children?

RESPONSE: (b) (5) (b) (5) Per CRM

3. Deputy Attorney General Rosenstein made it a priority to prosecute intellectual property theft by foreign and domestic actors. Will you continue his work and make increased prosecutions of intellectual property theft a priority?

RESPONSE: (b) (5) (b) (5) Per CRM

4. What is the role of antitrust law as it relates to intellectual property?

RESPONSE: (b) (5)

5. I've heard complaints that some companies are purposefully using the system—specifically the IPR/PGR processes—to prevent competitors from being able to challenge their market dominance. Is this type of conduct within the patent system anticompetitive and subject to possible DOJ antitrust enforcement? Should it be?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR FEINSTEIN

1. The Department of Justice has a tradition of being insulated from politics. It is the chief law enforcement agency for the federal government and its mission is to represent and serve the interests of the American people, not to serve as the personal lawyer for the President, any President.
 - a. How much information is appropriate to share with the White House about an ongoing criminal investigation?

RESPONSE: (b) (5)



- b. Can the White House direct the law enforcement priorities of the Department? If so, are there any limitations?

RESPONSE: (b) (5)

2. Do you agree that Congress should be provided the entire Mueller report, without any redactions? If not, on what basis should the contents of that report be limited?

RESPONSE: (b) (5)

3. Neither you, nor the head of the Criminal Division, nor Attorney General Barr have ever been prosecutors. How do you plan to address this given the Deputy Attorney General oversees both the Criminal Division and all 94 U.S. Attorneys' Offices?

RESPONSE: (b) (5)

4. On certain difficult, close-call, high-profile cases, the final decision on whether to proceed with an indictment is made by the Deputy Attorney General. What factors would you consider in deciding whether to proceed with such an indictment?

RESPONSE: (b) (5) (b) (5) Per CRM



5. The position of Deputy Attorney General also oversees the Department's national security efforts. What experience do you have with the type of sensitive national security matters that the Deputy Attorney General oversees?

RESPONSE: (b) (5)

6. One of the big problems with the Administration's fuel economy proposal is the way that it has invited a legal conflict with the state of California. Today, these standards are implemented by agreement as a single, coordinated national program of standards. California was open to discussing changes to this program, but the Administration publicly cancelled negotiations and instead proposed to challenge California's authority to set its own pollution standards. These issues are sure to go to court if the proposed rule is finalized as written.

- a. Why did you decide it was necessary to challenge California's authority to regulate emissions instead of working with them?

RESPONSE: (b) (5)

- b. At the Department of Justice, do you plan to recuse yourself from lawsuits on this topic?

RESPONSE: (b) (5)

7. When you were the General Counsel at the Office of Management and Budget (OMB) – during the Bush administration – you reportedly went to great lengths to oppose policies aimed at combating climate change. (Juliet Eilperin and R. Jeffrey Smith, *EPA Won't Act on Emissions This Year*, WASHINGTON POST (July 11, 2008))

- a. Do you believe that climate change is real?

RESPONSE: (b) (5)

- b. Do you believe it is caused by human activity?

RESPONSE: (b) (5)

- c. Have you advocated for – or worked on – any policies that would help address climate change?

RESPONSE: (b) (5)

8. If confirmed, you would have authority over the Department’s Civil Division, which recently argued that the entire Affordable Care Act is unconstitutional and should be struck down. In the past, you have called the ACA a “government takeover of health care,” and you served on an advisory board of the National Federation of Independent Business (NFIB) during the time when the NFIB was challenging the ACA in court. (Jeffrey Rosen, *Obama vs. the Regulators*, WASHINGTON POST (Aug. 6, 2009))

- a. Do you agree with the Justice Department’s argument that the entire Affordable Care Act is unconstitutional?

RESPONSE: (b) (5)

- b. Given your previous role and your strong opinions, will you commit to recusing yourself from this issue?

RESPONSE: (b) (5)

9. You served as the Chief Counsel to the Platform Committee for the Republican National Convention in 2012. The Republican Platform asserted that any legislation to limit gun clips or magazines violates the Second Amendment. Do you believe that government has the authority to limit the capacity of gun clips or magazines?

RESPONSE: (b) (5)

10. The 2012 Republican Platform also asserted that the Fourteenth Amendment should be understood to restrict women’s reproductive rights. Republican Senator Olympia Snowe wrote an op-ed criticizing “the overly rigid language” in the GOP platform – which failed to include any “exceptions for cases of rape, incest or danger to the life of the mother.” (Olympia Snowe, *The GOP Has a Problem with Women. Here’s How We Can Fix That*, WASHINGTON POST (Aug. 27, 2012))

- a. Do you agree with the 2012 Republican Platform position that the Fourteenth Amendment should be interpreted to restrict women’s reproductive rights?

RESPONSE: (b) (5)

- b. Do you believe there should be no exceptions in cases of rape, incest, or danger to the life of the mother?

RESPONSE: (b) (5)

11. The 2012 GOP Platform also called for stricter voter-ID laws, arguing that they were necessary to prevent voting by noncitizens, which allegedly represented “a significant and growing form of voter fraud.” After taking office, President Trump convened a commission to investigate voter fraud. As the *Associated Press* reported it, “The now-disbanded voting integrity commission launched by the Trump administration uncovered no evidence to support claims of widespread voter fraud, according to an analysis of administration documents released Friday.” (Marina Villeneuve, *Trump Commission Did Not Find Widespread Voter Fraud*, Associated Press (Aug. 3, 2018))

- a. Did you offer the GOP Platform Committee any advice or counsel on the platform language asserting that voting by noncitizens constituted “a significant and growing form of voter fraud”?

RESPONSE: (b) (5)

- b. The most significant instance of election fraud in recent years appears to have been during the 2018 election in North Carolina’s 9th Congressional District. Do you have any evidence to support the assertion that voting by noncitizens constitutes “a significant and growing form of voter fraud”? If so, please outline it.

RESPONSE: (b) (5)

12. Multiple news outlets have reported that you were one of the leaders of a faction within the Bush administration fighting action on climate change. For example, in one article from 2008, a former Associate Deputy Administrator for the EPA named you as one of the “primary opponents” of greenhouse gas emissions regulations that were proposed and approved by top administration officials, including the White House Deputy Chief of Staff. (Alexander Duncan, *Oil Industry, Cheney Staff Buried GHG Regulations: House Report*, ELECTRIC POWER DAILY (July 21, 2008)) In 2007, the EPA completed an internal analysis concluding that carbon dioxide is a threat to human welfare. According to the *Washington Post*, when the EPA sent its analysis to OMB, “OMB staff refused to open it, and it sat in limbo for months.” The *Post* also reported that the Bush

administration edited “its officials’ congressional testimony, refus[ed] to read documents prepared by career employees and approved by top appointees, [and] request[ed] changes in computer models to lower estimates of the benefits of curbing carbon dioxide.” The *Post* added, “Rosen asked at one meeting if carbon dioxide emissions from a tailpipe could be treated differently than those from a power plant, wondering if the molecules are different. The answer was that they are not.” (Juliet Eilperin and R. Jeffrey Smith, *EPA Won’t Act on Emissions This Year*, WASHINGTON POST (July 11, 2008))

- a. Are these press reports accurate? If not, what exactly is incorrect and what is accurate?

RESPONSE: (b) (5)

- b. Did you ever edit, or direct anyone else to edit, career officials’ congressional testimony as it related to the benefits of curbing carbon dioxide specifically or climate change more generally?

RESPONSE: (b) (5)

- c. Did you ever request changes, or direct other officials to request changes, in computer models – or any other aspect of the EPA’s analysis – to lower estimates of the benefits of curbing carbon dioxide?

RESPONSE: (b) (5)

- 13. During your hearing, Senator Whitehouse discussed your record on environmental issues, and he mentioned several news sources by name – specifically *The Washington Post*, *The New York Times*, and *The Atlantic*. In response you said that he was citing “fake news.” The President has repeatedly called *The Washington Post* and *The New York Times* “fake news,” and he has also called the press “the enemy of the people.”

- a. If you’re confirmed, you will be the number two law enforcement official in the United States. Do you believe it is appropriate for senior law enforcement officials to refer to major media outlets as “fake news”?

RESPONSE: (b) (5)

- b. What exactly did you mean by the phrase “fake news”? What do you believe was “fake” about the news reports that Senator Whitehouse cited?

RESPONSE: (b) (5)

- c. Do you believe that the press is “the enemy of the people”?

RESPONSE: (b) (5)

14. You indicated on your Senate Judiciary Questionnaire that you have been a member of the National Association of Scholars (NAS) since 2012 – and that you were previously a member from approximately 1995 to 2004. *E&E News* reported that NAS “has long cast doubt on established and mainstream climate science.” NAS’s tax filings show – according to *E&E News* – that the organization “has received hundreds of thousands of dollars in funding from the Charles Koch Foundation, as well as the Sarah Scaife Foundation, both of which have supported attacks on climate science.” (*Scientists Say They Want Open Data – But Not Pruitt’s Plan*, E&E NEWS’S CLIMATEWIRE (Apr. 25, 2018))

a. Why did you join the National Association of Scholars?

RESPONSE: (b) (5)

b. At the time you first joined the organization in 1995, were you aware of the organization’s views on established and mainstream climate science?

RESPONSE: (b) (5)

c. At the time you re-joined the organization in 2012, were you aware of the organization’s views on established and mainstream climate science?

RESPONSE: (b) (5)

15. At your hearing, you acknowledged that the Trump administration has proposed to have a “time out, or a flattening” of fuel-economy standards after 2020. Numerous media reports have noted that the administration’s proposal on the CAFÉ standards contained mathematical errors and faulty assumptions. As the *Los Angeles Times* reported, “Findings published in the journal *Science* describe the Trump administration’s cost-benefit analysis as marred by mistakes and miscalculations, based on cherry-picked data and faulty assumptions and skewed in its conclusions. The analysis ‘has fundamental flaws and inconsistencies, is at odds with basic economic theory and empirical studies, [and] is misleading,’ the researchers wrote.” (Tony Barboza, *Trump Fuel Economy Rollback is Based on Misleading and Shoddy Calculations, Study Finds* (Dec. 6, 2018)) Do you believe that fuel efficiency necessarily has an impact on safety? If so, on what basis?

RESPONSE: (b) (5)

16. Calendars of your schedule at the Department of Transportation were released through a Freedom of Information Act request. They appear to indicate that you had several meetings with political activists or consultants. For example, in May of 2017 you appear to have met with Republican pollster Frank Luntz. Over the course 2017, your calendar appears to indicate that you had four meetings with Steven Law, the President of American Crossroads and Crossroads GPS.

a. What was the agenda for the meetings with Steven Law and what was discussed?

RESPONSE: (b) (5)

b. What was the agenda for the meeting with Frank Luntz and what was discussed?

RESPONSE: (b) (5)

c. Given these meetings, your role on the 2012 GOP Platform Committee, and your significant donations to Republican candidates over the years, would you commit to recusing yourself from any law enforcement or DOJ activities related to elections and/or voting rights?

RESPONSE: (b) (5)

17. If confirmed, will you commit to timely responding to minority requests — and not just requests from a Chair or members of the majority?

RESPONSE: (b) (5)

18. When Congress requests information from the Executive Branch, how and in what circumstances is executive privilege properly invoked? What standards and process will you use to evaluate the legitimacy of presidential executive privilege claims?

RESPONSE: (b) (5)

19. Then-Attorney General Sessions appeared before this Committee for an oversight hearing on October 18, 2017. The Committee still has not received responses to Questions for the Record submitted to Mr. Sessions. If confirmed, do you commit to ensuring that the Justice Department finally responds to those QFRs in full and without further delay?

RESPONSE: (b) (5)

20. Career Justice Department employees are the lifeblood of the agency. They play a critical role in its daily functions and serve as a repository of institutional knowledge that

is crucial to maintaining consistency and even-handed, nonpartisan application of the law throughout administrations. If confirmed, how would you treat a career Justice Department employee who expressed disagreement with a proposed Department action?

RESPONSE: (b) (5)

21. The Supreme Court has unanimously ruled that a President can be required to turn over information relevant to an ongoing investigation. It upheld the subpoena for the tapes of Oval Office conversations that revealed President Nixon's efforts to cover up the Watergate break-in. This case was *U.S. v. Nixon*.

a. Was *U.S. v. Nixon* correctly decided?

RESPONSE: (b) (5)

b. Can a sitting President be required to respond to a subpoena?

RESPONSE: (b) (5)

22. At your hearing, several Senators asked you about Justice Department policies governing contacts between the White House and the Department regarding ongoing investigations. If confirmed, do you commit to enforcing these policies and ensuring that both the Justice Department and the White House know the rules?

RESPONSE: (b) (5)

23. Officials from the Justice Department's Civil Rights Division have yet to appear before this Committee for an oversight hearing. If confirmed, will you commit to ensuring that the Civil Rights Division comes before this Committee for an oversight hearing?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR LEAHY

1. In 2008, a Bush administration official said that you, as General Counsel for the Office of Management and Budget, were one of the “primary opponents” of the Bush administration taking any action on climate change. There are also reports indicating that as OMB’s General Counsel, you had repeatedly asked whether CO2 from automobiles could be viewed and treated differently than CO2 from power plants – even though, as a former EPA official said he explained to you on multiple occasions, “there is no scientific way of differentiate between CO2 from a car or a power plant.” That former EPA official viewed repeatedly having to explain this irrefutable fact as “embarrassing.” If confirmed as Deputy Attorney General you will oversee, among other units, the Environment and Natural Resources Division.

- a. Do you agree that government policies and practices should be informed by scientific evidence?

RESPONSE: (b) (5)

- b. Do you disagree with the overwhelming majority of scientists who assert that climate change is an irrefutable reality that has been caused by human activity? If so, on what basis?

RESPONSE: (b) (5)

- c. Are there any scenarios in which companies should be held liable for any contributions they make to climate change?

RESPONSE: (b) (5)

2. The Deputy Attorney General oversees a massive number of prosecutors and agents involved in criminal investigations. Yet you have no criminal law experience – neither as a prosecutor nor as a defense lawyer. And you have never worked at the Justice Department in any capacity. This position has always been filled, with perhaps a single exception, by someone with significant criminal law and Justice Department experience.
- a. What experiences can you point to that should give Congress confidence you would, if confirmed, effectively manage and guide tens of thousands of criminal prosecutors and agents and add value to the Department’s decision process on

difficult criminal law issues?

RESPONSE: (b) (5)

3. In 2012, you served as chief legal counsel to the Platform Committee of the Republican National Convention. That year, the RNC's Platform took a number of controversial and extreme positions, including arguing for a citizenship question in the decennial census, and a defense of state voter ID laws to protect against "a significant and growing form of voter fraud."

- a. What role did you play in developing, writing, or in any way shaping the legal and policy positions taken by the RNC's Platform that year? Please provide a detailed response explaining every Platform position you were involved in developing, writing, or shaping in any way.

RESPONSE: (b) (5)

- b. What form of "significant and growing" voter fraud was the RNC Platform referring to in its defense of state voter ID laws? Can you please provide copies of any relevant data and statistics regarding voter fraud that the Platform used to craft this policy position?

RESPONSE: (b) (5)

4. At your confirmation hearing you said at OMB you were involved in the USA PATRIOT Act reauthorization.

- a. Do you support any reforms or changes to these authorities?

RESPONSE: (b) (5)

- b. Do you believe there were any abuses or violations of civil liberties committed by the United States government under the auspices of the USA PATRIOT Act?

RESPONSE: (b) (5)

5. On March 14, 2019, I joined Senators Grassley, Cornyn, and Feinstein – all members of the Senate Judiciary Committee, with jurisdiction over the Freedom of Information Act (FOIA) – in a letter to the Justice Department inquiring into the Department's role and efforts to ensure government-wide compliance with FOIA. We had asked the Department to respond to our letter by April 17, 2019 – today – and yet only received a verbal update – today – that the Department was still in the process of reviewing and responding to our questions. Our letter was in part about the tardiness of agency responses to FOIA requests,

so the tardiness of Department's response to our letter only underscores our concerns.

- a. What will you do as Deputy Attorney General to ensure the timeliness of responses to requests for information from Congress – which is constitutionally situated as the overseer of the Department – especially when they come from Members on committees of relevant jurisdiction?

RESPONSE: (b) (5)




- b. Will you commit, if confirmed, to ensuring the Justice Department responds to oversight requests of all members of Congress, regardless of whether they serve in the majority or minority or serve as a chairman of a committee?

RESPONSE: (b) (5)




- c. Do you believe that Congressional oversight is an important means for creating accountability in all branches of government?

RESPONSE: (b) (5)



6. Does the First Amendment allow the use of a religious litmus test for entry into the United States? How did the drafters of the First Amendment view religious litmus tests?

RESPONSE: (b) (5)



7. Do you agree with Justice Scalia's characterization of the Voting Rights Act as a "perpetuation of racial entitlement?"

RESPONSE: (b) (5)



8. How will you ensure, if confirmed, that the First Step Act is fully implemented?

RESPONSE: (b) (5)



9. What are your thoughts on the need for further criminal justice reform? Do you believe additional legislative reforms are necessary?

RESPONSE: (b) (5)

(b) (5) Per CRM

10. What are your views on bias within law enforcement, implicit or otherwise? What role should the Justice Department play to address any bias within law enforcement?

RESPONSE: (b) (5)

11. What is your strategy, if confirmed, to increase hate crimes reporting to the FBI? What steps would you take, for example, to ensure that all federal agencies fully report hate crime statistics as provided by the Hate Crime Statistics Act of 1990 and the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act?

RESPONSE: (b) (5)

12. What role should the Justice Department play in supporting state and local law enforcement's efforts to reduce opioid trafficking and use? What is your view of the COPS Anti-Heroin Task Force (AHTF) program? Congress appropriated approximately \$32 million for AHTF in FY 2019. Do you support additional levels of funding for FY 2020?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR DURBIN

1. If you are confirmed, what elements of the First Step Act would you prioritize for implementation?

RESPONSE: (b) (5)

2. What is your view of the Justice Department's current charging policy? Do you think any changes are needed to the policy?

RESPONSE: (b) (5)

3. What is your understanding of the Justice Department's "zero tolerance" policy?

RESPONSE: (b) (5)

4. The federal government has lost track of parents who were removed from the U.S. after being separated from their children because of the zero-tolerance policy. Does the Trump Administration bear any responsibility to find these lost parents?

RESPONSE: (b) (5)

5. Attorney General Sessions initiated the zero tolerance policy and directed DOJ to coordinate with DHS to ensure all illegal-entry cases were referred to DOJ for prosecution. Do you acknowledge any Justice Department responsibility for the family separation debacle that resulted?

RESPONSE: (b) (5)

6. What are your top priorities for EOIR if you are confirmed?

RESPONSE: (b) (5)

7. What is your understanding of the process for hiring immigration judges?

RESPONSE: (b) (5)

8. Will you commit that, if you are confirmed, any immigration judges selected will be chosen solely on the basis of merit and will include qualified candidates from the nonprofit and private sectors?

RESPONSE: (b) (5)

9. Are you aware that whistleblowers have made allegations of politicized hiring practices for immigration judges and Board of Immigration Appeals members under Attorney General Sessions? According to these whistleblower accounts, DOJ improperly withheld or rescinded offers for these positions based on the perception that candidates hold political or ideological views that do not align with those of the Trump Administration. Was this proper, in your view?

RESPONSE: (b) (5)

10. What is your understanding of the Deputy Attorney General's role in overseeing BOP?

RESPONSE: (b) (5)

11. If confirmed, what will be your top priorities for BOP?

RESPONSE: (b) (5)

12. What is your understanding of the staffing situation at BOP?

RESPONSE: (b) (5)

(b) (5)

13. On April 10, in testimony before the Senate Appropriations Committee, Attorney General Barr said "I lifted yesterday" the BOP hiring freeze that had been in place since 2017. Is it accurate that the hiring freeze was not lifted until April 9, 2019?

RESPONSE: (b) (5)

14. If confirmed, what will you do to address BOP staffing shortfalls?

RESPONSE: (b) (5)

15. When I asked you about voting rights in our meeting before your hearing, you said that voting rights are the base of our pyramid of freedom. Are you concerned that under the Trump Administration, DOJ has not brought a single Section 2 case under the Voting Rights Act?

RESPONSE: (b) (5)

16. President Trump claimed, without evidence, that 3-5 million people illegally voted in the 2016 election. Do you agree with his claim? Are you aware of any evidence that supports it?

RESPONSE: (b) (5)

17. Are you aware of any examples of voter suppression in the 2018 election?

RESPONSE: (b) (5)

18. What will you do if the President or the Attorney General ask you to do something that you believe is illegal?

RESPONSE: (b) (5)

19. What will you do if the President or the Attorney General asks you to defend a statement or tweet that you know to be false?

RESPONSE: (b) (5)

20. What is the obligation of the Deputy Attorney General when the President shows contempt for the federal judiciary and the rule of law? Does the Deputy Attorney General have an obligation to defend the integrity of the judiciary and commit to abide by its rulings?

RESPONSE: (b) (5)

21. You were confirmed to be the Deputy Secretary of Transportation on May 16, 2017. On June 5, 2017, President Trump announced his intent to nominate Steven Bradbury to be General Counsel at the Department of Transportation. Mr. Bradbury was a longtime partner at Kirkland & Ellis, your old law firm, and he also headed the DOJ Office of Legal Counsel from 2005-2009. Mr. Bradbury was confirmed in November 2017.

- a. Did you play any role in recommending Mr. Bradbury to serve as General Counsel to the Department of Transportation?

RESPONSE: (b) (5)

- b. Did you work with Mr. Bradbury on any matters at Kirkland & Ellis? If so, please describe each such matter.

RESPONSE: (b) (5)

- c. What matters did you and Mr. Bradbury work on together at the Department of Transportation? Please describe each such matter.

RESPONSE: (b) (5)

- d. On June 28, 2017, Senator John McCain sent a letter expressing his strong objection to consideration of Mr. Bradbury's nomination. Senator McCain wrote: "while serving as the acting head of the Department of Justice's Office of Legal Counsel from 2005 to 2009, Mr. Bradbury authored several legal memoranda that authorized the use of waterboarding and other forms of torture and degrading treatment. I find his nomination

to any position of trust in our government to be personally offensive.” Were you aware of Senator McCain’s opposition to Mr. Bradbury’s nomination, and if so, what was your reaction to Senator McCain’s opposition?

RESPONSE: (b) (5)

e. Is waterboarding torture?

RESPONSE: (b) (5)



f. Is waterboarding illegal under U.S. law?

RESPONSE: (b) (5)



QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR WHITEHOUSE

1. *The New York Times* reported that you were a chief author of the Safer Affordable Fuel-Efficient Vehicles Rule (“SAFE”), “President Trump’s plan to roll back a major environmental rule and let cars emit more tailpipe pollution.” The Times reported that your plan “not only would permit more planet-warming pollution from cars, it would also challenge the right of California and other states to set their own, more restrictive state-level pollution standards.”¹

- a. As Deputy Secretary of Transportation, did you author – in full or in part – SAFE?

RESPONSE: (b) (5)

- b. Does SAFE let cars emit more greenhouse gas pollution?

RESPONSE: (b) (5)

- c. Does SAFE challenge the right of states to set their own more restrictive state-level pollution standards?

RESPONSE: (b) (5)

2. According to the *New York Times* and statements made at your confirmation hearing, you argued that fuel-efficient cars are less safe because they are lighter. According to the Times, “Mr. Rosen and Ms. King have also justified their proposal [SAFE] with a new analysis concluding that the stricter Obama-era pollution rules would lead to thousands of deaths in road accidents. They argue that more fuel-efficient cars are less safe because they are lighter.” It was also reported that “Mr. Wheeler has sharply questioned the auto fatality numbers”²

¹ <https://www.nytimes.com/2018/07/27/climate/trump-auto-pollution-rollback.html>

² *Id.*

- a. Did you justify SAFE with analysis about auto fatalities? Please specify the type of analysis done and the results of the analysis.

RESPONSE: (b) (5)

- b. What scientific evidence did you rely on when you make the determination that fuel-efficient cars are less safe because they are lighter? Please specify.

RESPONSE: (b) (5)

- c. Did the employees who were involved in analyzing the relationship between automobile weight and auto fatalities have experience with analyzing auto fatality numbers or have advanced degrees in statistics, econometrics or a related discipline?

RESPONSE: (b) (5)

- d. What role did you have in determining the auto fatality numbers? Please specify.

RESPONSE: (b) (5)

- e. What direction did you provide to employees charged with analyzing the relationship between automobile weight and auto fatalities or automobile safety? Please specify.

RESPONSE: (b) (5)

- f. Did acting administrator Wheeler ever express any doubts that the auto fatality numbers were accurate?

RESPONSE: (b) (5)

- g. Did acting administrator Wheeler ever express any doubts that the auto fatality numbers would withstand review by a federal court?

RESPONSE: (b) (5)

- h. Did any other EPA, DOT, or White House official express doubts that the auto fatality numbers were accurate?

RESPONSE: (b) (5)

- i. Did any other EPA, DOT, or White House official express doubts that the auto fatality numbers would withstand review by a federal court?

RESPONSE: (b) (5)

- j. You mentioned in response to my questioning at your confirmation hearing that some of the sources I cited were “fake news.” Is this New York Times report “fake news”? Please specify which claims are false and provide specific evidence.

RESPONSE: (b) (5)

3. Do you have any formal training in statistical or econometric modeling? Please specify.

RESPONSE: (b) (5)

4. According to the *Washington Post*, “In 2016, the EPA estimated that complying with the tighter tailpipe standards would cost roughly \$900 per car by 2025, with NHTSA putting the figure at \$1,200. Two years later, Trump officials argue that keeping the Obama-era standards could raise costs by more than \$2,300 per vehicle.”³ The questions below refer to these calculations.

- a. In your view, how much would the higher standards on tailpipe emissions implemented by the Obama Administration cost per vehicle?

RESPONSE: (b) (5)

- b. Please specify the methodology used to establish that number and the reasons why you believe that number is correct.

RESPONSE: (b) (5)

³ https://www.washingtonpost.com/national/health-science/2018/08/01/90c818ac-9125-11e8-8322-b5482bf5e0f5_story.html?utm_term=.3d63634fcde2

- c. Please specify the differences in methodology which lead to the changes in estimates between 2016 and 2018.

RESPONSE: (b) (5)

- d. What was your involvement in calculating these cost estimates? Please specify.

RESPONSE: (b) (5)

- e. Did you ever direct employees from the DOT or EPA to modify their calculations or the assumptions underlying those calculations? Please specify.

RESPONSE: (b) (5)

- f. Did you discuss these calculations with employees from DOT and/or EPA? Please specify the content of those conversations.

RESPONSE: (b) (5)

- g. Did you discuss these calculations with the White House? Please specify the content of those conversations.

RESPONSE: (b) (5)

- h. Did you discuss these calculations with people outside the federal government? Please specify the contents of those conversations.

RESPONSE: (b) (5)

5. *The Atlantic* has reported there were mistakes in the calculations cited as justification for freezing fuel economy standards under SAFE. The Atlantic reported that, “[i]n some cases, the mistakes are so large—and so central to the rule’s legal justification—that remedying them may destabilize the entire argument for the proposal.”⁴

⁴ <https://www.theatlantic.com/science/archive/2018/10/trumps-clean-car-rollback-is-riddled-with-math-errors-clouding-its-legal-future/574249/>

- a. What was your involvement in the calculations that were used as justification for SAFE? Please specify.

RESPONSE: (b) (5)

- b. Were you aware of any mistakes in the calculations? Please specify.

RESPONSE: (b) (5)

- c. Why do you think the agency made so many mistakes when performing these analyses?

RESPONSE: (b) (5)

- d. Do you believe it is the responsibility of agency leadership when mistakes are included in public filings?

RESPONSE: (b) (5)

- e. You mentioned in response to my questioning at your confirmation hearing that some of the sources I cited were “fake news” Is this *Atlantic* report “fake news”?

RESPONSE: (b) (5)

6. In their public comment on your proposal to gut CAFE standards by implementing SAFE, Honda Motors noted a critical error in your scrappage model. A scrappage model is used to simulate the American car market. Honda wrote, “A key element in the scrappage model is vehicle miles traveled (VMT)... In the case of higher stringency and more expensive new cars, the scrappage model should shift VMT from new cars to older cars. However, data from published model outputs includes an unexplained *increase* in VMT. This appears to be an accounting error that requires correction...this phantom VMT (either disappearing in one scenario or appearing in another, depending on the point of reference) is troubling. We believe it is an artifact of a *new, insufficiently matured model that needs further refinement and validation*. We urge the agencies to investigate the phantom VMT phenomenon and correct the model accordingly.” Honda concluded, “We believe that correcting this error in the scrappage

model specifications will dramatically lower the agencies' estimates of scrappage-related theoretical fatalities.”⁵

- a. Why did Honda write that the model was “insufficiently matured”?

RESPONSE: (b) (5)

- b. Are you aware of the phantom VMT problem in the scrappage model?

RESPONSE: (b) (5)

- c. Please describe how VMT was calculated in the scrappage model.

RESPONSE: (b) (5)

- d. Please describe the problem of phantom VMT and how it skews the estimates of fatalities.

RESPONSE: (b) (5)

- e. Did you direct employees from the DOT or EPA to modify their calculations or the assumptions underlying those calculations in order to achieve a certain result?

RESPONSE: (b) (5)

- f. In light of Honda's comment, do you believe the fatality numbers used to justify SAFE are accurate?

RESPONSE: (b) (5)

- g. After Honda published its comment, how did the DOT respond? Please specify.

RESPONSE: (b) (5)

⁵ https://hondainamerica.com/wp-content/uploads/NHTSA-2018-0067_EPA-HQ-OAR-2018-0283-Honda-Comment.pdf

- h. Please specify the procedures you implemented at DOT to ensure that all DOT work product is accurate.

RESPONSE: (b) (5)

7. In a *Washington Post* article⁶ discussing SAFE, Bill Charmley, the Director of the Assessment and Standards division of the EPA's Office of Transportation and Air Quality, is quoted saying "EPA's technical issues have not been addressed, and the analysis performed ... does not represent what EPA considers to be the best, or the most up-to-date, information available to EPA." The same article states: "EPA experts also called 'indefensible' some aspects of a program the transportation agency used and said they had corrected 'erroneous and otherwise problematic elements of the model's logic and algorithms.'" It also states that "EPA's internal analysis suggested...that freezing the Obama-era rules would lead to slightly more fatalities (seven for every trillion miles driven), cost jobs, and in economic terms, have a net negative impact of \$83 billion."
- a. Were you aware of any technical issues raised by EPA that DOT failed to address in its analysis?

RESPONSE: (b) (5)

- b. Were you aware of concerns raised by Mr. Charmley or others about the quality of the information incorporated into DOT analysis?

RESPONSE: (b) (5)

- c. Did EPA's internal analysis differ from that of DOT?

RESPONSE: (b) (5)

- d. What were the reasons for this difference?

RESPONSE: (b) (5)

⁶ https://www.washingtonpost.com/energy-environment/2018/08/15/trump-administration-said-weaker-fuel-standards-would-save-lives-epa-experts-disagree/?utm_term=.4e375e3e3223

8. SAFE proposes to revoke California's Clean Air Act waiver to enforce its own vehicle greenhouse gas emissions and zero-emissions vehicle standards, providing that "States may not adopt or enforce tailpipe greenhouse gas emissions standards when such standards relate to fuel economy standards and are therefore preempted under EPCA, regardless of whether EPA granted any waivers under the Clean Air Act (CAA).... NHTSA and EPA agree that state tailpipe greenhouse gas emissions standards do not become Federal standards and qualify as "other motor vehicle standards of the Government," when subject to a CAA preemption waiver. EPCA's legislative history supports this position." You also said, in response to Senator Booker at your March 29, 2017 confirmation hearing for your current role, that "I have said many times I have a somewhat simple view that if Congress has written a law, then administrative agencies should implement the law." With that in mind, please answer the following questions:

On October 25, 2018, Senator Carper sent a letter⁷ to then-Acting EPA Administrator Wheeler and DOT Secretary Chao. The following questions refer to that letter as well as the documents appended to it.

- a. Do you agree that on Tuesday November 20, 2007 at 4:38 PM, a representative of Patton Boggs (which at the time represented Cerberus, which had purchased Chrysler) shared draft legislative language with staff for then-Representative Markey (the lead House proponent of the fuel economy provisions that were enacted as part of the Energy Independence and Security Act of 2007) that sought to change EPA's authority to "promulgate regulations applicable to emissions of greenhouse gases from automobiles"? If not, why not?

RESPONSE: (b) (5)

- b. Do you agree that this November 20, 2007 draft legislative language also would have limited state authority, stating "a State or a political subdivision of a State may prescribe requirements for greenhouse gas emissions for automobiles obtained for its own use"? If not, why not?

RESPONSE: (b) (5)

- c. Do you agree that on December 6, 2007, a Statement of Administration Policy was issued by the Executive Office of the President on H.R. 6, the Energy Independence and Security Act of 2007, that this Statement said that the President's senior advisors would recommend a Presidential veto of the bill if it remained in its current form, and that this Statement listed as among the reasons for that recommendation the fact that the bill "leaves ambiguous the role of the Environmental Protection Agency (EPA) in regulating fuel economy," saying that

⁷ <https://www.carper.senate.gov/public/index.cfm/2018/10/carper-leads-democrats-to-warn-trump-administration-of-legal-vulnerabilities-in-proposal-to-block-california-from-setting-its-own-clean-car-standards>

“the bill needs to clarify one agency as the sole entity, after consultation with other affected agencies, to be responsible for a single national regulatory standard for both fuel economy and tailpipe greenhouse gas emissions from vehicles”? If not, why not?

RESPONSE: (b) (5)

- d. Do you agree that on, December 13, 2007, another Statement of Administration Policy was issued by the Executive Office of the President on H.R. 6, the Energy Independence and Security Act of 2007, that this Statement said that the President’s senior advisors would recommend a Presidential veto of the bill if it remained in its current form, and that the Statement listed as among the reasons for that recommendation the need for the bill to “clarify, however, that DOT should establish this single national regulatory standard, in consultation with the Environmental Protection Agency, and that neither agency should add additional layers of regulation”? If not, why not?

RESPONSE: (b) (5)

- e. Do you agree that the Energy Independence and Security Act of 2007 was voted on by both the House and the Senate and was subsequently signed into law on December 19, 2007, without including language like that suggested by Cerberus that limited state authority to prescribe requirements for greenhouse gas emissions for automobiles, or provisions that addressed language in two Presidential veto threats calling for a single federal regulator for regulating fuel economy? If not, why not?

RESPONSE: (b) (5)

- f. Do you agree that Congress was presented with legislative options that would have limited both EPA and California’s Clean Air Act authority to promulgate and enforce vehicle greenhouse gas emissions standards, and chose not to enact any such provisions in the Energy Independence and Security Act, even when faced with two Presidential veto threats? If not, why not?

RESPONSE: (b) (5)

9. On October 26, 2018, Mr. Greg Dotson, Assistant Professor of Law at the University of Oregon School of Law, submitted comments⁸ to the docket for the Safer Affordable Fuel-Efficient Vehicles Rule. The following questions refer to materials described in that submission.

⁸ https://law.uoregon.edu/images/uploads/entries/SAFE_Comments_Dotson.pdf

- a. Do you agree that in 2010, after the Obama Administration made its determination under the Clean Air Act that greenhouse gas emissions from motor vehicles endangers health and welfare (and after granting California its waiver to enforce its own vehicle greenhouse gas emissions standards), Senator Murkowski authored a Resolution to disapprove the so-called ‘endangerment finding’ under the Congressional Review Act, stating that “The EPA does not need to take over this process, and it should not be allowed to do so under a law that was never intended to regulate fuel economy....The best way to avoid a messy patchwork would be to pass our disapproval resolution, revoke California’s waiver, and allow one Federal agency to set one standard that works for all 50 States,” that the Murkowski resolution was defeated by the United States Senate, and that at no time during the debate did anyone suggest that the Energy Independence and Security Act had revoked EPA’s (and/or California’s) Clean Air Act authority to regulate vehicle greenhouse gas emissions, or that EPA and California had no such authority in the first place? If not, why not?

RESPONSE: (b) (5)

- b. Do you agree that in 2011, Congressional Republicans authored the Energy Tax Prevention Act, which would have created a new section 330 of the Clean Air Act which stated that “The Administrator may not, under this Act, promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change,” prevented the adoption of the model years 2012-16 vehicle greenhouse gas standards, and modified section 209 of the Clean Air Act to prohibit the EPA Administrator from granting a waiver from preemption to California to allow it to enforce its own vehicle greenhouse gas emissions standards for model year 2017 and beyond, saying that “(A) the Administrator may not waive application of subsection (a); and “(B) no waiver granted prior to the date of enactment of this paragraph may be construed to waive the application of subsection (a)””? If not why not?

RESPONSE: (b) (5)

- c. Do you agree that the accompanying report on the Energy Tax Prevention Act stated that “Proponents of EPA’s agenda have stated that the Supreme Court’s decision should be the last word, but this is incorrect. The Supreme Court did not mandate that the EPA make an endangerment finding and indeed no administration whether Democrat or Republican has ever made such an unprecedented finding. While it is the role of the Supreme Court to interpret existing legislation such as the CAA, Congress is free to amend or clarify that legislation if it believes the Supreme Court concluded wrongly or that circumstances necessitate a change in the law. Indeed, the current Congress would

be remiss if it ignored the deleterious impact of EPA's regulatory agenda in favor of a highly controversial 5 to 4 Supreme Court decision and its interpretation of Congressional intent when the CAA which was enacted--decades before global warming emerged as an issue"? If not, why not?

RESPONSE: (b) (5)

- d. Do you agree that the Energy Tax Prevention Act was rejected by the United States Senate and never enacted into law? If not, why not?

RESPONSE: (b) (5)

- e. Do you agree that the Energy Tax Prevention Act, and its accompanying report, both of which were written years after the enactment of the Energy Independence and Security Act, did not assert that the Energy Independence and Security Act had revoked EPA's (and/or California's) Clean Air Act authority to regulate vehicle greenhouse gas emissions, or that EPA and California had no such authority in the first place? If not, why not?

RESPONSE: (b) (5)

10. In light of the repeated, failed, efforts by some to legislatively repeal or limit EPA's (and/or California's) Clean Air Act authority to regulate vehicle greenhouse gas emissions both before and after the enactment of the Energy Independence and Security Act, and your own statement to the United States Senate that "if Congress has written a law, then administrative agencies should implement the law,"⁹ please provide a specific and detailed legal justification for the Department of Transportation's statement in its proposed Safer Affordable Fuel-Efficient Vehicles Rule that "States may not adopt or enforce tailpipe greenhouse gas emissions standards when such standards relate to fuel economy standards and are therefore preempted under EPCA, regardless of whether EPA granted any waivers under the Clean Air Act (CAA)...NHTSA and EPA agree that state tailpipe greenhouse gas emissions standards do not become Federal standards and qualify as "other motor vehicle standards of the Government," when subject to a CAA preemption waiver. EPCA's legislative history supports this position."

RESPONSE: (b) (5)

11. According to your public schedule (see attached), between May 23, 2017 and March 31, 2018, you participated in at least 9 Department staff meetings about the CAFE standards.

⁹ <https://www.congress.gov/115/chrge/shrg29972/CHRG-115shrg29972.pdf>

- a. Please specify the contents of these meetings.

RESPONSE: (b) (5)

- b. At any of these meetings, did any non-government employees participate in any way? Please specify.

RESPONSE: (b) (5)

- c. According to the NHTSA, 28% of motor vehicle fatalities result from alcohol-impaired-driving crashes.¹⁰ How many meetings did you participate in which sought to reduce drunken driving fatalities? Please specify.

RESPONSE: (b) (5)

12. According to your public schedule (see attached), between May 23, 2017 and March 31, 2018, you participated in at least 19 meetings with executives, lobbyists, and organizations tied to the automotive and/or fossil fuel industries.

- a. During this time, did you meet with any members of environmental groups? Please specify.

RESPONSE: (b) (5)

- b. Do you agree that meetings with lobbyists and executives with interests directly related to SAFE can lead to the appearance of impropriety?

RESPONSE: (b) (5)

13. According to your Department of Transportation calendar (see attached), you met with Steven Law, the President of American Crossroads, on four separate occasions: May 25, 2017; June 13, 2017; August 1, 2017; and November 13, 2017. Steven Law is the President of American Crossroads – a conservative Super PAC founded by Karl Rove – which has been called, “among the most powerful forces in national politics, a shadow

¹⁰ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812450>

party that has spent hundreds of millions of dollars on advertising, data and opposition research to help elect candidates.”¹¹

- a. What was the official purpose of each of the four meetings with Mr. Law? Please specify the purpose of each meeting.

RESPONSE: (b) (5)

- b. Were Department of Transportation plans or policies ever discussed at any of the meetings? Please specify.

RESPONSE: (b) (5)

- c. While employed at the Department of Transportation did you ever use your official position to assist with the activities or fundraising of American Crossroads?

RESPONSE: (b) (5)

- d. The May 25, 2017 and August 1, 2017 meetings with Mr. Law are listed as “Lunch with Steven Law”. Where did these lunches occur? Please specify the location of each lunch.

RESPONSE: (b) (5)

14. In 2007, the Supreme Court ruled that the Clean Air Act required the EPA to regulate greenhouse gases.¹² To comply with the ruling, the EPA completed an internal analysis concluding that carbon dioxide is a threat to human welfare – also known as an endangerment finding. But according to the *Washington Post*, when the EPA sent its endangerment finding to OMB, “OMB staff refused to open it, and it sat in limbo for months.”¹³ The Post also reported that the White House requested, “changes in computer models to lower estimates of the benefits of curbing carbon dioxide”

¹¹ <https://www.nytimes.com/2015/05/22/us/politics/american-crossroads-facing-challenges-to-its-political-power.html>

¹² *Massachusetts v. EPA*, 549 U.S. 497 (2007).

¹³ Juliet Eilperin and R. Jeffrey Smith, *EPA Won’t Act on Emissions This Year*, WASHINGTON POST (July 11, 2008), http://www.washingtonpost.com/wp-dyn/content/article/2008/07/10/AR2008071003087_pf.html.

- a. While at OMB did you ever personally refuse to open an endangerment finding from the EPA?

RESPONSE: (b) (5)

- b. While at OMB did you ever direct an employee or have knowledge of an employee refusing to open an endangerment finding from the EPA?

RESPONSE: (b) (5)

- c. How long did it take OMB to act on the EPA's finding?

RESPONSE: (b) (5)

- d. Please discuss how OMB handled this endangerment finding.

RESPONSE: (b) (5)

- e. Do you agree that carbon dioxide and other greenhouse gases cause the phenomenon known as global warming?

RESPONSE: (b) (5)

- f. Do you agree that the carbon dioxide causing global warming is primarily the product of human activity?

RESPONSE: (b) (5)

- g. You mentioned in response to my questioning at your confirmation hearing that some of the sources I cited were "fake news". Is this Washington Post report "fake news"? Please specify which claims are false and provide specific evidence

RESPONSE: (b) (5)

15. At various points in your career you have been a member of an association called the National Association of Scholars (NAS). NAS is an advocacy group that criticizes

academia for having a “liberal bias”¹⁴ and “routinely attack[s] climate science.”¹⁵ NAS It has received hundreds of thousands of dollars from the climate-denying Koch Foundation and the Sarah Scaife Foundation.

- a. Do you believe that the scientific consensus on climate change is incorrect? Please specify the basis for these beliefs.

RESPONSE: (b) (5)

- b. Why did you join NAS?

RESPONSE: (b) (5)

- c. Will you associate with NAS if confirmed as Deputy Attorney General?

RESPONSE: (b) (5)

16. What do you view as the most important cyber security issues facing the US?

- a. What role should the Justice Department play in addressing these threats?

RESPONSE: (b) (5)

17. Do you believe that the Department of Justice should operate free of political influence from the White House in certain law enforcement matters, especially those involving specific parties?

RESPONSE: (b) (5)

18. Under what circumstances would it be unconstitutional for the President to intervene in the Department of Justice’s handling of an enforcement matter involving specific parties?

¹⁴ NAS blog post: https://www.nas.org/articles/nas_board_member_writes_on_liberal_bias_in_academia

¹⁵ EPA: *Scientists say they want open data – but not Pruitt’s plan*, CLIMATEWIRE (Apr. 25, 2018).

RESPONSE: (b) (5)

19. Will you commit that you will work to ensure the Department of Justice operates free from political pressure over individual enforcement matters?

RESPONSE: (b) (5)

20. Is it your view that DOJ regulations, policy, and practice also forbid the indictment of a sitting president? If so, how can the policy obtain Article III review so that a court may “say what the law is”? Should OLC be the final arbiter of this controversial question?
- a. What if there are grounds to indict and the sole reason for declination is the current DOJ policy against indicting a sitting president?

RESPONSE: (b) (5)

- b. With respect to OLC’s conclusion that the president cannot be indicted under any circumstances while in office, is there any other person in the country who similarly cannot be indicted under any circumstances?

RESPONSE: (b) (5)

- c. Should derogatory information against an uncharged president or other official subject to impeachment be provided to Congress? How is Congress to exercise its constitutional rights and carry out its constitutional obligations if such information is shielded?

RESPONSE: (b) (5)

- d. Do the public and Congress have a significant interest in facts indicating criminal wrongdoing by the President of the United States while in office?

RESPONSE: (b) (5)

- e. Do you agree that Congress has a constitutional responsibility to investigate and prosecute a President for high crimes and misdemeanors when warranted?

RESPONSE: (b) (5)

- f. Do you agree that, in order to carry out its constitutional responsibilities, Congress should be made aware by the executive branch of conduct potentially constituting high crimes and misdemeanors?

RESPONSE: (b) (5)

21. On February 14, 2018, the Washington Post reported that then-White House counsel Donald McGahn made a call in April 2017 to Acting Deputy Attorney General Dana Boente in an effort to persuade the FBI director to announce that President Trump was not personally under investigation in the probe of Russian interference in the 2016 election. On September 13, 2017, White House Press Secretary Sarah Huckabee Sanders suggested from the Press Secretary podium that the Department of Justice prosecute Former FBI Director James Comey. On December 2018, CNN reported that President Trump “lashed out” at Acting Attorney General Whitaker on at least two occasions because he was angry about the actions of federal prosecutors in the Southern District of New York in the Michael Cohen case, in which SDNY directly implicated the president – or “Individual 1” – in criminal wrongdoing. According to reports, Trump pressed Whitaker on why more wasn’t being done to control the prosecutors who brought the charges in the first place, suggesting they were going rogue. Assuming these reports are accurate, did each of these contacts comply with the governing policy limiting DOJ-White House contacts regarding pending criminal matters?

RESPONSE: (b) (5)

22. On January 3, 2019, CNN reported that Acting Attorney General Whitaker spoke in private with former Attorney General and Federalist Society co-founder Edwin Meese, who is now a private citizen. During that meeting, Whitaker reportedly told Meese that the U.S. Attorney in Utah is continuing to investigate allegations that the FBI abused its powers in surveilling a former Trump campaign adviser and should have done more to investigate the Clinton Foundation.

- a. Do those communications seem proper to you?

RESPONSE: (b) (5)

- b. Under what circumstances would you allow officials of the Department to discuss a pending DOJ criminal investigation with a non-witness private citizen?

RESPONSE: (b) (5)



23. What weight will you give the ethics advice of career DOJ officials regarding recusal and conflicts of interest? What explanations will you commit to provide in cases where you choose not to follow their advice?

RESPONSE: (b) (5)



24. Please describe the nature of your involvement with the Federalist Society, including your participation in any public or private events or meetings.

RESPONSE: (b) (5)

25. Have you been involved in any way, formally or informally, with the selection, recommendation, or vetting of judicial nominees during the Trump administration? Please describe with specificity the nature of any such involvement, including the names of any judicial nominees on whose nominations you worked.

RESPONSE: (b) (5)

26. As you are aware, Congress passed—and the President just signed—the most sweeping criminal justice reform in decades. On both the sentencing and prison side, the FIRST STEP Act incorporates reforms that would seem to go against your previously stated policy views. Will you commit to implement the law faithfully and to let us know if you hit roadblocks or challenges?

RESPONSE: (b) (5)

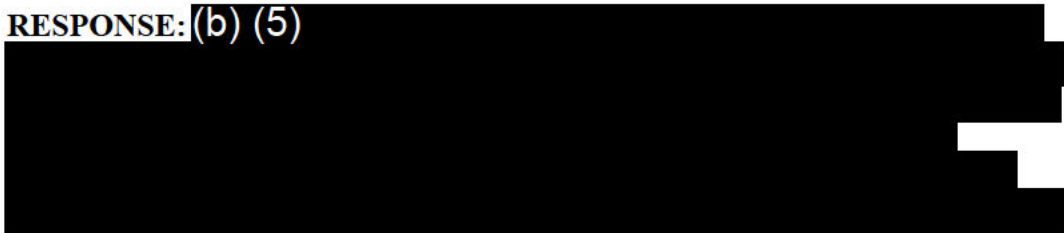


QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR KLOBUCHAR

1. When we met prior to your hearing, we had a discussion about antitrust issues and the need for the Justice Department to reinvigorate antitrust law enforcement.
 - a. One of my bills, the Merger Enforcement Improvement Act, would see to it that the antitrust agencies get the resources they need to tackle antitrust enforcement challenges in our rapidly changing economy. Would you support a modest update to merger filing fees to ensure that the antitrust agencies have the resources they need to fulfill their missions?

RESPONSE: (b) (5)



- b. I am concerned about mergers that give companies the power to unfairly lower prices that they pay for goods or the wages they pay to workers. My bill, the Consolidation Prevention and Competition Promotion Act, would clarify that such mergers would be illegal under the Clayton Act. If confirmed, how will you approach the problems posed by monopsonies?

RESPONSE: (b) (5)



- c. In light of comments that the President has reportedly made regarding pending mergers, I remain concerned with the threat of politically-motivated decision making in the Justice Department's Antitrust Division. If confirmed, what will you do to ensure that

the Division's investigatory and enforcement activities are free from improper political influence?

RESPONSE: (b) (5)

2. I have led legislation for years to prevent those convicted of stalking misdemeanors from being able to buy guns and to extend the protections in current law to include dating partners. Studies have found that women are five times more likely to be killed when a gun is present in situations of domestic abuse, and nearly half of women killed by romantic partners are killed by dating partners. On April 4, the House of Representatives included a provision based on my bill in its reauthorization of the Violence Against Women Act.
- a. Do you agree that we should keep guns out of the hands of domestic abusers, including those who abuse dating partners?

RESPONSE: (b) (5)

- b. Will you support a reauthorization of the Violence Against Women Act that includes needed updates and enhancements?

RESPONSE: (b) (5)

3. One of my highest priorities on this Committee has been working to combat human trafficking. Last Congress, I led the Abolish Human Trafficking Act with Senator Cornyn, which reauthorized and strengthened key programs that support survivors of trafficking and provide resources to federal, state, and local law enforcement officials.
- a. In January 2017, the Justice Department released its National Strategy to Combat Human Trafficking, which was required by a provision that I authored in the Justice for Victims of Trafficking Act. That provision also requires an "ongoing assessment of future trends, challenges, and opportunities." Will you commit to updating the National Strategy?

RESPONSE: (b) (5)

4. I am concerned about protecting access to the polls and guarding against foreign interference in our elections. I have been working with Senator Lankford on the Secure Elections Act, which provides resources to states to strengthen election cybersecurity and protect against foreign interference. Do you agree that we should invest in election infrastructure, use backup paper ballots, and create an auditable paper trail for votes?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR COONS

1. What specific matters have you worked on that have given you the experience required to be Deputy Attorney General? In your response, please refer to your involvement in specific cases, investigations, or decisions.

RESPONSE: (b) (5)

2. During your opening statement at your nomination hearing before the Senate Judiciary Committee, you said that you “expect to draw fully on the extraordinary lawyers with prosecutorial experience at the Department.”
 - a. Are you going to defer to lawyers with prosecutorial experience when making decisions regarding criminal or national security matters?

RESPONSE: (b) (5)

- b. If you are going to apply your own judgment when making decisions regarding criminal or national security matters, how will you ensure that you have all of the facts necessary to make an informed decision?

RESPONSE: (b) (5)

3. What would you do if the President asks you to violate the law or cover up alleged criminal activity (with or without the promise of a pardon)?

RESPONSE: (b) (5)

4. If you learn that the White House is attempting to interfere with any ongoing investigation stemming from the Special Counsel’s Office’s work, will you report that information to Congress?

RESPONSE: (b) (5)

5. In your nomination hearing, I asked you whether you would discuss specific investigations with the President. More specifically:

- a. What, in your view, are the circumstances when it is appropriate for the President or another White House official to contact the Department of Justice or the FBI with instructions on how to conduct an ongoing criminal investigation?

RESPONSE: (b) (5)

- b. What factors or criteria would you examine to determine if contacts were appropriate?

RESPONSE: (b) (5)

- c. What would you do if there were inappropriate communications between the White House and the Department of Justice regarding an investigation?

RESPONSE: (b) (5)

- d. Is it ever appropriate for the President or another White House official to contact the Department of Justice or the FBI to recommend or request that they open a new investigation?

RESPONSE: (b) (5)

- e. Is it ever appropriate for the President or another White House official to contact the Department of Justice or the FBI to recommend or request suspending or closing an ongoing investigation?

RESPONSE: (b) (5)

- f. Is it ever appropriate for the President or another White House official to ask the Department of Justice or the FBI about an ongoing investigation that potentially implicates the President and/or other White House officials?

RESPONSE: (b) (5)

6. Attorney General Barr reportedly plans to provide a redacted version of the Special Counsel's report to Congress and the public this week, but Attorney General Barr has characterized this as the "first pass."

- a. Do you agree that Congress is entitled to receive additional classified material or underlying investigative materials that may not be appropriate for public disclosure?

RESPONSE: (b) (5)

- b. Do you agree that the law allows the disclosure of grand jury information to Congress with a court order?

RESPONSE: (b) (5)

7. Do you believe that Special Counsel Mueller's investigation was a "witch hunt"?

RESPONSE: (b) (5)

8. Last week, Attorney General Barr testified in a Senate Appropriations Committee hearing that he thinks "spying" on the Trump campaign occurred.

- a. Are you aware of any evidence of unlawful surveillance of any campaign during the 2016 election?

RESPONSE: (b) (5)

- b. Do you believe that it is appropriate for a law enforcement official to describe lawful surveillance as spying?

RESPONSE: (b) (5)

9. Will you commit to taking all necessary steps to fully implement the First Step Act?

RESPONSE: (b) (5)

10. Evidence shows that solitary confinement has significant mental health consequences when used for extended periods of time. Do you believe solitary confinement should only be used as a last resort?

RESPONSE: (b) (5) I have not had the opportunity to study this issue. If confirmed, I look forward to reviewing this issue, including the facts of the situation and existing law and policies. Because I am not currently at the Department and not familiar with these facts, it would not be appropriate for me comment further.

11. Individuals are being jailed throughout the country when they are unable to pay a variety of court fines and fees. There is often little or no attempt to learn whether these individuals can afford to pay the imposed fines and fees or to work out alternatives to incarceration.

- a. Under your leadership, would the Department of Justice work to end this practice?

RESPONSE: (b) (5)

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- b. What is your position on the practice of imposing unaffordable money bail, which results in the pretrial incarceration of the poor who cannot afford to pay?

RESPONSE: (b) (5)

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12. The Department of Justice established the Office for Access to Justice (ATJ) in March 2010 to address the access-to-justice crisis in the criminal and civil justice system. ATJ's mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status.

- a. How will you improve access to justice for indigent criminal and civil defendants?

RESPONSE: (b) (5)

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- b. What affirmative steps will you take to improve access to justice?

RESPONSE: (b) (5)

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- c. How will you support the work of the Department of Justice Office for Access to Justice?

RESPONSE: (b) (5)

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13. According to statistics provided by the Federal Bureau of Investigation, hate crime incidents increased in 2017 for the third year in a row.

- a. Will you prioritize both the prevention and prosecution of hate crimes?

RESPONSE: (b) (5)

- b. How do you believe the Department of Justice should use its resources to address increases in hate crimes that have occurred during the Trump administration?

RESPONSE: (b) (5)

14. This administration has repeatedly delayed implementation of the Death in Custody Reporting Act. Do you think it is acceptable for the administration to delay implementation of this 2014 law until FY 2020?

RESPONSE: (b) (5)

15. The total volume of worldwide piracy in counterfeit products is estimated to be 2.5% of world trade (USD \$461 billion). Counterfeit products such as fake pharmaceutical drugs or faulty electronics can cause direct physical harm to Americans, and the profits from these illicit sales often go directly to the coffers of organized crime. How would you use Department of Justice resources to address this growing threat?

RESPONSE: (b) (5) (b) (5) Per CRM

16. The Department of Justice has made substantial efforts to combat trade secret theft by foreign nationals. In 2009, only 45 percent of federal trade secret cases were against foreign companies; this number increased to over 83 percent by 2015.

- a. Would you prioritize enforcement actions to combat trade secret theft by foreign nationals?

RESPONSE: (b) (5) (b) (5) Per CRM

- b. How do you plan to continue the Department of Justice's efforts to successfully target criminal trade secret theft?

RESPONSE: (b) (5) | (b) (5) Per CRM

17. The United States is currently facing a massive cybercrime wave that the White House has estimated costs more than \$57 billion annually to the U.S. economy. However, a recent study using the Justice Department's own data found that only an estimated three in 1,000 cyberattacks in this country ever result in an arrest.

- a. Do you agree that we have to narrow this enforcement gap?

RESPONSE: (b) (5) | (b) (5) Per CRM

- b. Although it may be difficult to successfully extradite and prosecute individuals located in countries like China, there have been a number of cases in which the U.S. has had success in arresting and extraditing cyber-attackers from foreign countries. Do you agree that we should be more aggressive in using existing laws against cyber-criminals located abroad, such as in China?

RESPONSE: (b) (5) | (b) (5) Per CRM

- c. Will you commit to ensuring that the Computer Crime and Intellectual Property Section and the Office of International Affairs are fully staffed, should you be confirmed?

RESPONSE: (b) (5) | (b) (5) Per CRM

- d. What actions would the Department take under your leadership to strengthen private sector cooperation in cybercrime investigations?

RESPONSE: (b) (5) | (b) (5) Per CRM

(b) (5) Per CRM

18. You noted in our meeting that protecting the integrity of elections is one of the Attorney General's top priorities.

- a. Do you agree that certain photo ID laws can disenfranchise otherwise eligible voters and disproportionately and unreasonably burden African-American and Latino voters?

RESPONSE: (b) (5)

- b. If confirmed, will you work with Congress to restore preclearance review under the Voting Rights Act by helping to develop a coverage formula that the Department of Justice would support?

RESPONSE: (b) (5)

19. Deaths caused by opioid overdoses have reached epidemic levels in the United States, including in Delaware, with devastating consequences for communities and families.

- a. What actions do you believe are most effective in the Department's efforts to combat the opioid epidemic?

RESPONSE: (b) (5)

- b. How do you think the Justice Department can help to break the cycle of addiction?

RESPONSE: (b) (5)

- c. Will you work with me on my legislation with Sen. Gardner to ensure that the Drug Enforcement Administration has real-time, nationwide oversight of all orders for controlled substances?

RESPONSE: (b) (5)

20. Do you support the use of specialized courts, such as drug courts and veterans treatment courts?

RESPONSE: (b) (5)

21. My home community of Wilmington, Delaware is working to reduce gun violence, and I want to identify ways that the federal government can help state and local law

enforcement confront this challenge. I have worked with Sen. Toomey and others to introduce the NICS Denial Notification Act, which requires the federal government to notify state and local law enforcement when someone fails a background check when trying to purchase a firearm.

- a. Do you agree that it would help state and local law enforcement to know when a prohibited person tried to buy a gun?

RESPONSE: (b) (5)

- b. What additional actions do you think the Justice Department should take to address gun violence?

RESPONSE: (b) (5)

- 22. Studies show that five percent of gun dealers sell 90 percent of guns that are subsequently used in criminal activity. How would you direct the Department of Justice to instruct the Bureau of Alcohol, Tobacco, Firearms and Explosives to crack down on dealers that funnel thousands of crime guns to city streets?

RESPONSE: (b) (5)

- 23. Last year, the Justice Department implemented a zero tolerance immigration enforcement policy, which resulted in the separation of thousands of children from their parents. This was a government-created humanitarian crisis. Will you commit that if confirmed to be the United States Deputy Attorney General, you will not advocate for any policy that would have the effect of separating migrant children from their parents, even if family separation is not the goal of the policy?

RESPONSE: (b) (5)

- 24. I am concerned that the Trump administration has routinely opposed environmental regulations that would protect our planet for future generations. The Assistant Attorney General of the Environment and Natural Resources Division, Jeffrey Bossert Clark, previously stated that the science behind climate change was “contestable.” When you were the General Counsel of the Office of Management and Budget (OMB) during the George W. Bush administration, OMB delayed action on climate change. You have also criticized the Obama administration’s efforts to combat climate change.

- a. Do you believe climate change poses a threat to the United States?

RESPONSE: (b) (5)

- b. If confirmed, what steps will you take to ensure that the Justice Department prosecutes companies that violate environmental regulations?

RESPONSE: (b) (5)

25. While you were the General Counsel of OMB, the Environmental Protection Agency concluded that man-made global warming endangered public welfare and sent the proposed finding to OMB. According to the *Washington Post*, “OMB staff refused to open it, and it sat in limbo for months.”

- a. Did you refuse to open any documents provided by the EPA or direct anyone else to refuse to open such documents?

RESPONSE: (b) (5)

- b. Did you oppose the EPA issuing an official statement that global warming harms human welfare?

RESPONSE: (b) (5)

26. According to multiple reports, the Trump administration’s justification for freezing fuel economy standards included calculation mistakes, misleading assumptions, and other errors.

- a. Please describe in detail your role in preparing this analysis.

RESPONSE: (b) (5)

- b. Do you acknowledge that the analysis included calculation mistakes, misleading assumptions, and/or errors?

RESPONSE: (b) (5)

27. According to your Senate Judiciary Committee Questionnaire, you served as the chief legal counsel to the Platform Committee of the Republican National Convention in 2012.

- a. Please describe your role as chief legal counsel to the Platform Committee in detail, including any role that you had in drafting, reviewing, or suggesting revisions to the platform.

RESPONSE: (b) (5)

- b. Do you agree with the following section of the platform, and did you have any role in drafting, reviewing, or revising it? “In addition to appointing activist judges, the current [Obama] Administration has included an activist and highly partisan Department of Justice. With a Republican Administration, the Department will stop suing States for exercising those powers reserved to the States, will stop abusing its preclearance authority to block photo-ID voting laws, and will fulfill its responsibility to defend all federal laws in court, including the Defense of Marriage Act.”

RESPONSE: (b) (5)

- c. Do you agree with the following section of the platform, and did you have any role in drafting, reviewing, or revising it? “The Patient Protection and Affordable Care Act – Obamacare – was never really about healthcare, though its impact upon the nation’s health is disastrous. From its start, it was about power, the expansion of government control over one sixth of our economy, and resulted in an attack on our Constitution, by requiring that U.S. citizens purchase health insurance. We agree with the four dissenting justices of the Supreme Court: ‘In our view the entire Act before us is invalid in its entirety.’”

RESPONSE: (b) (5)

28. In an op-ed in the *Washington Post*, you criticized President Obama’s “proposed government takeover of health care.” If confirmed, will you reevaluate the Department of Justice’s position to refuse to defend the Affordable Care Act and, in the process of doing so, consult with career officials who disagreed with the Department’s position not to defend the law?

RESPONSE: (b) (5)

29. When is it appropriate for the Department of Justice to decide not to defend a federal law?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR BLUMENTHAL

1. The Deputy Attorney General of the United States has direct authority over multiple Department of Justice components that handle complex criminal and national security matters. Specifically, all U.S. Attorneys, the Criminal Division, National Security Division, the FBI, DEA and Interpol Washington report directly to the Deputy Attorney General.

- a. When we met in my office, you said you would surround yourself with people with criminal law expertise. But smart people with significant experience in criminal law can still disagree on sensitive issues and close calls. How will you evaluate those disagreements to come to a decision?

RESPONSE: (b) (5)

- b. On certain difficult, high-profile cases, the final decision on whether or not to proceed with an indictment is made by the Deputy Attorney General. What factors will you consider in deciding whether to proceed with such an indictment?

RESPONSE: (b) (5)

- c. The Deputy Attorney General's office resolves venue disputes, where two different U.S. Attorney's Offices are each pursuing the same investigation or case. What factors would you use in deciding such disputes?

RESPONSE: (b) (5)

2. The Deputy Attorney General has supervisory authority over all 94 US Attorneys' offices throughout the United States. Several of these offices are currently investigating the president. Reports indicate that the president has tried on numerous occasions to interfere in these investigations.

- a. Will you commit to this Committee that you will refuse any order from President Trump or Attorney General Barr to interfere in any U.S. Attorney's investigation or prosecution implicating the president, his family, or his associates?

RESPONSE: (b) (5)

- b. Will you commit to submitting your resignation if you are asked to engage in such interference?

RESPONSE: (b) (5)

- c. Will you commit to coming before Congress and being fully transparent about what was asked of you, were this to happen?

RESPONSE: (b) (5)

- d. What will you do if the President asks you to report to him about the status of a criminal investigation at the Department of Justice?

RESPONSE: (b) (5)

- e. What is your view on the level of information that is appropriate to share with the White House about an ongoing criminal investigation?

RESPONSE: (b) (5)

- 3. In an op-ed in the Washington Post, you criticized President Obama's "proposed government takeover of health care," in reference to the Affordable Care Act ("ACA"). You wrote, "[w]ith his 'stimulus' bill, 'cap and trade' solution to global warming, and proposed government takeover of health care, President Obama has made no secret of his desire to expand the size, role and budgets of federal health and safety regulators."

The Trump Administration, through the Department of Justice, recently argued in federal court that the ACA should be overturned. The Department argued in a brief that a recent district court decision that invalidated Obamacare is correct. This is a departure from the normal practice of the Department of Justice, which is usually to defend laws on the books, like the ACA, from legal challenge.

- a. Do you support the Trump Administration's stance that the ACA should be struck down in its entirety?

RESPONSE: (b) (5)

- b. Do you believe the ACA is unconstitutional?

RESPONSE: (b) (5)



4. In testimony before the House Appropriations Committee, Attorney General Barr was asked about the Trump Administration's cruel policy of separating families at the border. In response, Attorney General Barr said, "I support the president's policy, which is [that] we're not going to separate families."

Recent news reports, however, indicate that President Trump has told his aides he wants to reinstate family separation at the border, and even ordered agents to resume the practice. As Deputy Attorney General, you would supervise the criminal enforcement components of the Department of Justice. You would also be in a position to provide advice on the legality of the president's policies.

- a. Do you support the Trump Administration's family separation policy?
- b. Do you believe this policy is legal?

RESPONSE: (b) (5)



5. During your confirmation process to be Deputy Secretary of Transportation in 2017, you denied "ask[ing] about such molecules being different" and stated that the New York Times "account was inaccurate."

In 2008, the Washington Post reported that while serving as General Counsel for the Office of Management and Budget, you asked during a meeting "if carbon dioxide emissions from a tailpipe could be treated differently than those from a power plant." Similarly the New York Times reported in 2008 that you "asked three times for separate memorandums describing why carbon dioxide molecules emitted from vehicles (already likely to be subject to regulation) could not be distinguished from CO2 molecules emitted from power-plant smokestacks (whose regulation was opposed by powerful segment of the industry and administration)."

These reports were corroborated by Jason Burnett, a former Associate Deputy Administrator of the Environmental Protection Agency. During his testimony before the Senate Committee on Environment and Public Works in 2008, Mr. Burnett stated that you “had raised that questions multiple times” as general counsel of the Office of Management and Budget.

How do you reconcile these public reports with your denial, during Congressional testimony, of having asked this question while serving as the General Counsel at OMB?

RESPONSE: (b) (5)



6. One of the major achievements of the last century is the recognition that racial segregation is a great moral and legal wrong. The Supreme Court recognized this truth in one of its most esteemed decisions, *Brown v. Board of Education*. I would hope that, in 2019, the correctness of the *Brown* decision cannot be in dispute.

Attorney General Barr, in his answers to my questions for the record responded unequivocally to the question of whether *Brown* was correctly decided. He gave me a simple and clear answer – yes. Yet during your confirmation hearing you refused to answer the question. This is not the first time I have faced evasive answers with regards to *Brown*. Two years into the Trump Administration and judicial nominee after judicial nominee has come before this committee firmly and repeatedly declining to say that they believe *Brown* was correctly decided. If confirmed as Deputy Attorney General, you will oversee the Office of Legal Policy. Part of your duties will be to advise the president on judicial nominations, so I ask you this:

- a. Do you believe *Brown v. Board of Education* was correctly decided?

RESPONSE: (b) (5)

- b. Will you commit to only recommending for nomination individuals who believe *Brown* was correctly decided?

RESPONSE: (b) (5)

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QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR HIRONO

1. At your hearing, Sen. Blumenthal asked you whether you agreed if *Brown v. Board of Education* and *Roe v. Wade* were corrected decided. You refused to answer, stating that *Roe v. Wade* has been “the precedent of the Supreme Court for better than 40 years now and unless and until that changes it’s the law.” You explained your refusal to answer by stating that “whatever the law is whether it’s the decision I would favor or disfavor I see it as the role of the Department of Justice to uphold the law such as it is unless Congress or the courts change it.”

- a. Your caveat with respect to *Roe v. Wade* – that is long-established precedent “unless and until that changes” – is curious. Is it your view that that *Brown v. Board of Education* is also only the law “unless and until that changes”?

RESPONSE: (b) (5)

- b. Given your stated view that the role of the Justice Department is to “uphold the law such as it is unless Congress or the courts change it,” do you believe the Justice Department’s recent efforts to argue that a court should deem the Affordable Care Act unconstitutional are an improper exercise of the Justice Department’s authority?

RESPONSE: (b) (5)

- c. Judicial nominees often decline to answer Senator Blumenthal’s question about *Brown v. Board*, saying they don’t want to signal how they would rule if the issue were to come before them. I disagree with them, but even if I didn’t, your refusal to answer makes no sense. As Deputy Attorney General, with supervisory authority over both the Civil Division and the Office of the Solicitor General, you would have significant input into which legal arguments the Department of Justice makes in District and Circuit Courts, as well as the Supreme Court. Are you saying that if a challenge to *Brown v. Board* came, for instance, from a public school district wanting to segregate students by race, you would not advocate for the federal government to argue that *Brown* be upheld? Do you think *Brown* is still good law?

RESPONSE: (b) (5)

2. CNN reported that the President has recently fired or is considering firing top Homeland Security officials in what an official has called a “near-systematic purge.” These officials reportedly refused some of President Trump’s demands to implement legally questionable and even outright unlawful policies.

- a. If the President asked you to adopt a legally questionable policy, would you refuse? Would you resign rather than execute that policy?

RESPONSE: (b) (5)

- b. If the President asked you to adopt a clearly unlawful policy or to violate a court order blocking the President’s policy, would you refuse? Would you resign rather than execute that policy?

RESPONSE: (b) (5)

3. The President has been at numerous rallies where he has prodded the crowd into chanting “Lock her up,” in reference to his political opponent Hillary Clinton. If the President directed you to open or stop a criminal investigation of his opponents or supporters, would you refuse? Would you resign rather than open a criminal investigation for purposes of political retribution?

RESPONSE: (b) (5) (b) (5) Per CRM

4. At Rod Rosenstein’s confirmation hearing to be Deputy Attorney General, I asked him whether he “agree[d] that the Office of the Attorney General is not the president’s personal law firm.” He answered, “Absolutely.” Do you think that the Office of the Attorney General is the president’s personal law firm?

RESPONSE: (b) (5)

5. When I asked you at your hearing whether you would commit to not reinstating the zero-tolerance policy or family separation policy, you seemed to be unclear about what former Attorney General's zero-tolerance policy did. Now that you've had a chance to familiarize yourself with the policy:
- a. If the Department of Homeland Security changed course again and referred families for prosecution of illegal entry, would you continue the zero-tolerance policy, knowing that it would result in children being separated from their parents?

RESPONSE: (b) (5)

- b. Do you believe that the zero-tolerance policy of prosecuting *all* Department of Homeland Security referrals of illegal reentry is an appropriate use of the Justice Department's limited resources?

RESPONSE: (b) (5)

- c. If confirmed, will you continue to implement former Attorney General Sessions's April 11, 2017 memo that directs federal prosecutors to highly prioritize the enforcement of immigration laws?

RESPONSE: (b) (5)

6. In 2012, you served as chief legal counsel to the Platform Committee of the Republican National Convention. That year, the Republican Platform included positions that:
- Advocated for denying federal funding to sanctuary cities;
 - Opposed restrictions on gun ownership, including limits on magazines and capacities of clips;
 - Argued that the Affordable Care Act was "invalid in its entirety" and a "mark of an outdated liberalism";
 - Called for vigorous enforcement of voter fraud, without providing a factual basis for a problem involving voter fraud;
 - Supported efforts to restrict abortion rights; and
 - Opposed same-sex marriage.
- a. Please state whether you agree with each of the positions in the 2012 Republican Platform listed above. If you refuse to answer this question, please state the legal reason for that refusal.

RESPONSE: (b) (5)

- b. Please explain what your role was in developing each of the 2012 Republican Platform positions listed above. If you refuse to answer this question, please state the legal reason for that refusal.

RESPONSE: (b) (5)

7. At your hearing, I asked you whether you believe birthright citizenship is guaranteed by the Fourteenth Amendment of the U.S. Constitution. You said you “have never had occasion to study that question.” You repeated this same answer, even after I read you the clear text of the Fourteenth Amendment, which states “All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside.”

In 1995, Walter Dellinger, then-Assistant Attorney General for the Office of Legal Counsel testified in the House Judiciary Subcommittees on Immigration and Claims and on the Constitution that to change birthright citizenship the Constitution would have to be amended. See <https://www.justice.gov/file/20136/download>.

- a. Now that you have had a chance to look at the Constitution and read Mr. Dellinger’s testimony, do you believe that birthright citizenship is guaranteed by the 14th Amendment?

RESPONSE: (b) (5)

- b. If you believe that you need to study the 14th Amendment further to determine whether it guarantees birthright citizenship, please explain which specific words in the 14th Amendment are unclear in meaning. If you refuse to answer this question, please state the legal reason for that refusal.

RESPONSE: (b) (5)

8. Last week, the New York Times and CNN reported that the President “privately urged” Customs and Border Protection Commissioner Kevin McAleenan, “to close the southwestern border to migrants” and told the Commissioner that he “would pardon [McAleenan] if he ever went to jail for denying US entry to migrants.”

- a. Do you believe that urging someone to take a legally questionable action while promising to issue a pardon if he or she is held accountable for the unlawful actions is a legitimate use of the President's pardon power?

RESPONSE: (b) (5)

- b. If confirmed, will you recommend that Donald Trump pardon any of the people who have already been convicted or have pleaded guilty under Special Counsel Robert Mueller's investigation or in related cases?

RESPONSE: (b) (5)

- c. Would you agree that pardoning anyone who is subject to a current indictment or will be subject to a future indictment in connection with the Special Counsel's investigation could be seen as an abuse of the President's pardon power?

RESPONSE: (b) (5)

- d. Do you believe it is proper for the President to use his pardon power to pardon his family members or any associates of businesses, foundations, campaigns, or organizations in which he has a personal interest?

RESPONSE: (b) (5)

9. At the hearing, Senator Feinstein asked you about a New York Times article that identified you as one of the chief authors of the Trump administration plan to roll back Corporate Average Fuel Economy (CAFE) and vehicle emissions standards by locking in 2020 standards through 2026. You told her that the New York Times mischaracterized your role.

- a. Please explain in detail what your role was in the Trump administration's efforts to roll back CAFE and vehicle emissions standards.

RESPONSE: (b) (5)

- b. Your calendar as Deputy Secretary of Transportation includes at least 11 meetings that appear to be related to these deregulatory efforts. For example, these meetings are listed with subjects such as "Cafe Strategy," and "CAFE Update w/Heidi King." Please explain what was discussed at these meetings and what your role was at these meetings. If you refuse to answer this question, please state the legal reason for that refusal.

RESPONSE: (b) (5)

10. The Trump administration has not brought a single lawsuit to enforce the Voting Rights Act. Moreover, the administration has actually withdrawn the Justice Department's claim against a Texas voter ID law that a federal district court judge found was enacted with discriminatory intent and reversed its position in a case by defending Ohio's voter purge efforts that Justice Sotomayor recognized "disproportionately affected minority, low-income, disabled, and veteran voters." In fact, career attorneys in the Civil Rights Division did not sign the amicus brief defending the voter purge efforts as they did the prior brief.

- a. Will you commit to vigorously enforcing the Voting Rights Act to protect the rights of minorities to vote?

RESPONSE: (b) (5)

- b. Will you commit to asking the Voting Rights Section of the Civil Rights Division to present to you all the instances where the Justice Department has been asked to initiate Section 2 claims under the Voting Rights Act and allowing the career attorneys in the Voting Rights Section to bring claims where appropriate?

RESPONSE: (b) (5)

- c. Similarly, if confirmed, will you commit to investigating, evaluating, and reviewing those states and jurisdictions—including any that were formerly covered under the Voting Rights Act’s preclearance system—that have passed voting laws that tend to hinder voter turnout to determine if they are, in fact, discriminatory, and to bring Section 2 claims under the Voting Rights Act for any that are found to have a discriminatory impact or purpose?

RESPONSE: (b) (5)

- d. Should you be confirmed, will you commit to working with Congress to support a fix to Section 5 of the Voting Rights Act, which was nullified by the Supreme Court in *Shelby County v. Holder*?

RESPONSE: (b) (5)

- e. If confirmed, will you commit to reviewing the decisions by the Justice Department to switch positions in the following two cases to determine whether customary processes for changing the government’s position in a case were followed and what, if any, improper influences impacted those decisions? The two cases are: (1) *Veasey v. Abbott*, where the Department withdrew its claim that a Texas voter ID law was enacted with a discriminatory intent, despite a finding of discriminatory intent by a federal district court, and (2) *Husted v. A. Philip Randolph Institute*, where the Department reversed its position by defending Ohio’s voter purge efforts under the National Voter Registration Act, even though Justice Sotomayor recognized such efforts “disproportionately affected minority, low-income, disabled, and veteran voters.”

RESPONSE: (b) (5)

(b) (5)

11. After the Supreme Court's decision in *Shelby County v. Holder*, many states passed voting restriction laws based on claims of going after voter fraud. But a 2014 study found a total of 31 credible allegations of voter fraud between 2000 and 2014 out of more than 1 billion votes cast.

- a. Are you aware of any credible study that confirms that there was massive voter fraud, not election fraud, in either the 2016 or 2018 election?

RESPONSE: (b) (5)

- b. Do you agree that voter fraud is incredibly rare in the context of the number of votes cast?

RESPONSE: (b) (5)

12. In a 2017 report entitled *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, the Civil Rights Division explained that "its experience demonstrates that court-enforceable consent decrees are most effective in ensuring accountability, transparency in implementation, and flexibility for accomplishing complex institutional reforms. Federal court oversight is often critical to address broad and deeply entrenched problems and to ensure the credibility of the reform agreement's mandates." But last November, just before leaving the Department, former Attorney General Jeff Sessions issued a memo that drastically limited use of consent decrees to bring police departments into compliance with the Constitution. At your hearing, you stated that you agreed with Mr. Sessions's memo and questioned whether the policy changes in the memo would make it tougher to enter into consent decrees for pattern or practice violations.

- a. Do you agree with the Civil Rights Division's report that based on its experience, "court-enforceable consent decrees are most effective" in accomplishing complex institutional reforms in a transparent way that ensures accountability?

RESPONSE: (b) (5)

- b. Despite the Civil Rights Division's finding regarding the historical effectiveness of consent decrees, Mr. Sessions's memo warns that "the Department should exercise special caution before entering into a consent decree with a state or local governmental entity." Among other changes, it requires any consent decrees to be approved not only by the Assistant Attorney General for Civil Rights or the U.S. Attorney, but also by the Deputy Attorney General or the Associate Attorney General. Would you agree that that Mr. Sessions's memo imposes more stringent requirements for the Civil Rights Division to pursue consent decrees, making it harder to enter into consent decrees for pattern or practice violations? If not, please explain.

RESPONSE: (b) (5)

13. Former Attorney General Sessions eliminated a highly effective program handled by the Office of Community Oriented Policing Services—also known as the COPS Office—that allowed local police departments to voluntarily work with Justice Department officials to improve trust between police and the public without court supervision and consent decrees. Former head of the Justice Department's Civil Rights Division Vanita Gupta criticized this decision, saying "[e]nding programs that help build trust between police and the communities they serve will only hurt public safety."

Under the Collaborative Reform Initiative for Technical Assistance program, local police departments involved in controversial incidents, such as police-involved shootings, would ask the COPS Office to investigate and issue public reports with recommendations.

- a. If confirmed, will you reinstate this program?
- b. If confirmed, what steps will you take to support and promote community-oriented policing?

RESPONSE: (b) (5)

14. The Washington Post published an article on January 3, 2019 that reported that a "recent internal Justice Department memo directed senior civil rights officials to

examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be.” In 2015, the Supreme Court, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, affirmed that the Fair Housing Act protects against discrimination based on a disparate impact.

- a. Do you believe that there are actions that can have a discriminatory impact regardless of intent? If so, how do you propose such actions should be addressed or remedied?
- b. Do you believe that a valid way to demonstrate discrimination is through a disparate impact analysis?
- c. If you are confirmed, will you continue this reported DOJ effort to change or remove disparate impact regulations related to enforcing civil rights laws?

RESPONSE: (b) (5)



15. The Justice Department has the responsibility for enforcing the Americans with Disabilities Act (ADA), one of the most successful civil rights laws passed in the United States. It has integrated people with disabilities into American life in ways they had not been before.

Last Congress, the House of Representatives passed H.R. 620, the “ADA Education and Reform Act of 2017,” which would remove most incentives for businesses to accommodate people with disabilities, and reward businesses for ignoring their responsibilities under the law. It was opposed by disability rights groups, and seen as a giant step backward for the country.

- a. Do you support these restrictions on the ADA’s protections?

RESPONSE: (b) (5)

- b. Do you believe the ADA goes too far in protecting the rights of people with disabilities?

RESPONSE: (b) (5)

- c. If confirmed, will you allow the Disability Rights Section of the Civil Rights Division to robustly enforce the ADA?

RESPONSE: (b) (5)

16. Last July, the Justice and Education Departments rescinded policy guidelines promoting diversity in education. This was in the context of a lawsuit brought by a conservative organization to challenge Harvard's diversity admissions policies. Do you believe that policies that promote diversity necessarily discriminate against other racial groups?

RESPONSE: (b) (5)

17. U.S. Immigration Courts operate as a component of the Department of Justice, which creates the possibility that Immigration Judges can be subjected to inappropriate political pressure. Moreover, former Attorney General Jeff Sessions decided to effectively subject Immigration Judges to quotas, which may make it difficult for these judges to review each case fully and fairly. What is your view of how Immigration Judges ought to be categorized and treated?

RESPONSE: (b) (5)

18. Recently, Attorney General Barr continued Former Attorney General Sessions' troubling, unusual practice of intervening in individual asylum applications and deciding cases himself as a way of making policy to limit the rights of asylum seekers. On April 16, 2019, Attorney General Barr directed immigration judges to

stop allowing certain asylum seekers to post bail by overturning an immigration appeals decision in the *Matter of M-S-*. When Mr. Sessions was Attorney General, he used the case *Matter of A-B* to overturn legal precedent and longstanding policies by significantly restricting the ability of victims of domestic violence and gang violence to obtain asylum relief. A court eventually struck down many of these new policies and ordered the government to bring prior claimants back to the United States who have already been deported so they can pursue their asylum claims. Do you think it is appropriate for an attorney general to intervene in immigration cases in order to set policies that narrow asylum protections that immigration judges have recognized were established by Congress?

RESPONSE: (b) (5)

19. Native Americans experience higher rates of domestic violence and sexual assault than other groups. According to a 2016 National Institute of Justice study, 56.1% of American Indian and Alaska Native women have experienced sexual violence in their lifetimes. Should you be confirmed, what steps will you take to ensure that the Office on Violence Against Women addresses the needs of Native Hawaiian, Alaska Native, and American Indian survivors of domestic violence and sexual assault?

RESPONSE: (b) (5)

20. Recent surveys of law enforcement officials, court officials, legal service providers, and victim advocates have found that fear of immigration enforcement is a significant barrier for immigrant survivors of sexual assault and domestic violence to seek help from law enforcement and the legal system. The immigration provisions of the Violence Against Women Act were enacted to address how the immigration process can be used by domestic violence, sexual assault, dating violence and stalking abusers to further perpetrate abuse and maintain control over their victims. If you are confirmed, what steps would you take to ensure that the Justice Department's Office on Violence Against Women supports access for vulnerable victims to VAWA's protections for non-citizen victims of domestic violence, sexual assault, dating violence, and stalking?

RESPONSE: (b) (5)

(b) (5)

21. In October 2018, The Washington Post published an article asserting that “Attorney General Jeff Sessions and Solicitor General Noel J. Francisco have repeatedly gone outside the usual appellate process to get issues such as the travel ban, immigration and greater authority for top officials before the justices.” The article argued that they aggressively bypassed the normal process of appealing lower court decisions to circuit courts, and tried to short-circuit the judicial process on the Trump administration’s “signature issues by seeking extraordinary relief from a reformed conservative Supreme Court.”

- a. Do you believe this strategy is proper? Do you think such efforts to repeatedly bypass the normal judicial processes may erode public confidence in the judicial system?

RESPONSE: (b) (5)

- b. Should you be confirmed, will you review the Trump administration’s efforts to bypass the appellate courts and jump directly to the Supreme Court and reconsider this strategy?

RESPONSE: (b) (5)

22. In an op-ed published in The Washington Post on January 10, 2019, a former lawyer in the Justice Department’s Office of Legal Counsel (OLC) wrote:

“[W]hen I was at OLC, I saw again and again how the decision to trust the president failed the office’s attorneys, the Justice Department and the American people. The failure took different forms. Sometimes, we just wouldn’t look that closely at the claims the president was making about the state of the world. When we did look closely, we could give only nudges. For example, if I identified a

claim by the president that was provably false, I would ask the White House to supply a fig leaf of supporting evidence. Or if the White House's justification for taking an action reeked of unconstitutional animus, I would suggest a less pungent framing or better tailoring of the actions described in the order."

She further explained that she "occasionally caught [her]self fashioning a pretext, building an alibi" for the President's "impulsive decisions."

- a. If you are confirmed, what steps will you take to prevent the Office of Legal Counsel from retroactively justifying the President's decisions or policies based on a pretext or a fig leaf of evidence?

RESPONSE: (b) (5)

- b. If you are confirmed and find that the Office of Legal Counsel has justified the legality of the President's decisions or policies based on a pretext or a fig leaf of evidence, will you agree to report such actions to the Senate Judiciary Committee?

RESPONSE: (b) (5)

[REDACTED]

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR BOOKER

1. In our meeting prior to your appearance before the Senate Judiciary Committee, you indicated that the local contribution to the Gateway Tunnels was a problem. You have also previously been quoted saying that the Gateway projects “lack realistic plans and commitments.”

However, the project sponsors have included in the most recent New Starts application the following local funding sources, which comprise over 50 percent of the share of cost of the Gateway Tunnels:

- RRIF loan proceeds to be repaid by PANYNJ payments to GDC, \$2.140 billion
- RRIF loan proceeds to be repaid from New York State payments to GDC, \$1.736 billion
- RRIF loan proceeds to be repaid from NJT payments to GDC, \$1.474 billion
- RRIF loan proceeds to be repaid from local revenues, \$787.7 million
- GDC revenue from PANYNJ payments, \$269.8 million
- GDC revenue from New York State and NJT, \$524.2 million

Despite this \$6.933 billion local commitment to the project, why did you state in our meeting that the local commitment to the Gateway Tunnels was insufficient?

RESPONSE: (b) (5)

2. Despite a stronger application, including the above specified funding sources, the Gateway Tunnels were given a medium-low rating from the Federal Transit Administration (FTA) in March 2019. Were any Department of Transportation political appointees involved in the decision to provide the Gateway Tunnels application a medium-low rating? If so, can you provide a detailed explanation of the role political appointees played in the technical review of the Gateway Tunnels application?

RESPONSE: (b) (5)

3. In our meeting prior to your appearance before the Senate Judiciary Committee, you noted that the Environmental Impact Statement (EIS) for the Portal North Bridge Project has been completed. In fact, the EIS was completed nearly two years ago, preconstruction activities have been funded, in large part, by a Transportation Investment Generating

Economic Recovery (TIGER) grant that was completed earlier this year, and the project sponsors are prepared to move forward immediately to construction of the Portal North Bridge Project. Can you explain what is holding up this critical project?

RESPONSE: (b) (5)

4. In 2018, project sponsors substantially improved the local commitment to the project by including the following local funding sources:
- Congestion Mitigation and Air Quality Improvement (CMAQ) funds, \$81.59 million
 - Amtrak Contribution, \$21.0 million. This contribution is from Amtrak's FY 2018 capital budget
 - NJTTF, matching funds for CMAQ grant, \$20.4 million
 - NJEDA bonds, repaid by NJTTFA revenues, \$499.4 million
 - NJTTF revenues applied to NJEDA financing charges, \$208.4 million

Despite the \$830.83 million local commitment comprising over 50 percent of the cost of the Portal North Bridge Project, the FTA provided the Portal North Bridge application a medium-low rating in March 2019. This is particularly concerning given that the Portal North Bridge has previously been given a medium-high rating and the project sponsors made detailed changes to its application to address FTA feedback. What specific actions are you taking to ensure that this project begins construction immediately?

RESPONSE: (b) (5)

5. What specific commitments can local sponsors make to the Portal North Bridge Project beyond what is in the 2018 application that would secure the full support of the Department of Transportation?

RESPONSE: (b) (5)

6. Does your office have an estimation of the daily cost to taxpayers for delaying the Portal North Bridge Project, which has completed its pre-construction phase and is ready for construction?

RESPONSE: (b) (5)

7. Despite the stronger application, including the previously mentioned specific funding sources resubmitted by project sponsors in 2018, the Portal North Bridge Project was given a medium-low rating from the FTA. Were any Department of Transportation

political appointees involved in the decision to provide the Portal North Bridge application a medium-low rating? If so, can you provide a detailed explanation of the role political appointees played in the technical review of the Portal North Bridge application?

RESPONSE: (b) (5)

8. When the Portal Bridge swings open and fails to shut, it cripples the entire northeast corridor, causing delays from D.C. to Boston. The bridge is so old that workers have to use a mallet to force the bridge to lock back into place. In 1996, an Amtrak train derailed while crossing the Portal Bridge injuring over 40 people, causing the train to crash into the marshes of Secaucus, and millions of dollars in damage. The aging tracks were found to contribute to this terrible accident.

In 2005, a sparking wire set fire to the aging wood under the bridge, posing a threat to passengers and severely disrupting service throughout the Northeast Corridor. In 2014 the wood beneath the bridge caught fire, delaying dozens of trains for hours.

Do you agree that delaying the Portal North Bridge Project threatens public safety?

RESPONSE: (b) (5)

9. The Portal Bridge and Hudson tunnels are single points of failure for 10 percent of our nation's GDP. If they were to completely fail in the coming years it would quickly lead to billions and billions of dollars draining from our economy and an unprecedented transportation nightmare. Do you believe that delaying construction of the Portal Bridge and Gateway Tunnels threatens the economic wellbeing of the northeast and the entire United States?

RESPONSE: (b) (5)

10. In our meeting prior to your appearance before the Senate Judiciary Committee, you indicated that the EIS for the Hudson Tunnel Project was not complete due to a lack of funding from local sponsors. However, as you know, the Portal North Bridge's EIS was completed nearly two years ago despite not having secured a Full Funding Grant Agreement from the FTA. Funding through the FTA and finalizing the EIS through the Federal Railroad Administration (FRA) are separate processes. Can you explain why the Secretary's office, in coordination with the FRA have not provided a record of decision for the Hudson Tunnel Project EIS given that the local sponsors provided a final EIS to the FRA for approval in March 2018? Please be specific.

RESPONSE: (b) (5)

11. Can you please provide me information regarding the volume of staff hours, the amount of work, and any challenges that the Department of Transportation has faced while trying to complete the EIS since the project sponsors submitted the EIS to the FRA over a year ago?

RESPONSE: (b) (5)

12. Does your office have an estimation of the daily cost to taxpayers caused by the delay in finalizing the EIS for the Hudson Tunnel Project?

RESPONSE: (b) (5)

13. Do you believe that the Department of Transportation's failure to finalize the Hudson Tunnel Project's EIS directly contradicts the administration's goal to reduce the amount of time it takes to complete the permitting and construction of infrastructure projects?

RESPONSE: (b) (5)

14. If confirmed as Deputy Attorney General, you would be the number two official at the Department of Justice charged with overseeing the Federal Bureau of Investigation, the Drug Enforcement Agency, U.S. Attorneys, the Bureau of Prisons, the Criminal Division, the National Security Division, and many other critical entities. Notably, you have no criminal law experience. The last person to have no prosecutorial or Department of Justice experience to serve as Deputy Attorney General was Jamie Gorelick, who served in that position from 1994 to 1997. However, she did have national security experience having served as General Counsel of the Department of Defense prior to her appointment as Deputy Attorney General.

At your nomination hearing, Senator Coons pressed you on lack of experience.¹⁶ He asked you whether you "had any experience evaluating the legality of a wiretap or giving direction on what Brady material to disclose."¹⁷ You replied that you had no experience relating to those matters. Senator Coons also noted that every Deputy Attorney General since 9/11 has had prosecutorial experience. With the creation of the National Security Division of the Department of Justice in 2005, the Deputy Attorney General's role expanded to include an extensive criminal and national security portfolio, encompassing critically important sections like counterterrorism, intelligence law, and foreign investment review.

- a. Why should members of this Committee not be concerned with your lack of experience in criminal law and national security matters?

¹⁶ *Nominations Hearing Before the Comm. on the Judiciary*, 116th Cong. (2019) (statement of Jeffrey Rosen, nominee to be Deputy Attorney General, U.S. Dep't of Justice).

¹⁷ *Id.*

RESPONSE: (b) (5)

- b. When you were asked to serve as Deputy Attorney General, did you hesitate to accept the position based on your lack of experience?

RESPONSE: (b) (5)

- c. You did not fully answer Senator Coons' question on this topic and I would like you to do so here. Please provide an explanation of your prior experience handling issues of national security law. If you have no relevant experience to point to, please explain at least five concrete steps you will take to prepare yourself to handle matters concerning national security.

RESPONSE: (b) (5)

- d. Much of national security law involves determining how to prioritize critical values like privacy and the First Amendment while maintaining the nation's security. How will you ensure that the Department of Justice safeguards civil liberties in this context?

RESPONSE: (b) (5)

15. In 2012, you were Chief Legal Counsel to the Platform Committee of the Republican National Convention.¹⁸ The 2012 Republican Platform stated, "In addition to appointing activist judges, the current Administration has included an activist and highly partisan Department of Justice. With a Republican Administration, the Department will stop suing States for exercising those powers reserved to the States, will stop abusing its preclearance authority to block photo-ID voting laws, and will fulfill its responsibility to defend all federal laws in court, including the Defense of Marriage Act."¹⁹

- a. What role did you play in drafting the 2012 Republican Platform?

RESPONSE: (b) (5)

- b. Do you believe the Department of Justice under the Obama Administration was activist and highly partisan? If so, please explain.

RESPONSE: (b) (5)

¹⁸ SJQ at pp. 9-10.

¹⁹ 2012 GOP Platform at p. 25, 2012 GOP Platform

- c. How did the Department of Justice under the Obama Administration abuse its preclearance authority?

RESPONSE: (b) (5)

16. The 2012 Republican Platform also stated: “We support State laws that require proof of citizenship at the time of voter registration to protect our electoral system against a significant and growing form of voter fraud. . . . We call for vigorous prosecution of voter fraud at the State and federal level.”²⁰

- a. What role did you play in drafting this statement in the 2012 Republican Platform?

RESPONSE: (b) (5)

- b. What data did the Platform Committee of the Republican National Convention rely on to conclude that non-citizens form a “significant and growing form of voting fraud”? Please be specific and include the data relied upon to make that assertion. If you cannot point to data to support that assertion, are you personally willing to disavow that statement?

RESPONSE: (b) (5)

17. According to the Justice Department’s website, the Civil Rights Division has filed *no* lawsuits to enforce Section 2 of the Voting Rights Act since President Trump took office. By comparison, the Civil Rights Division filed 5 such suits under President Obama, 15 under President George W. Bush, and 16 under President Clinton.

- a. Do you believe vigorous enforcement of the voting laws includes vigorous enforcement of Section 2 of the Voting Rights Act?

RESPONSE: (b) (5)



- b. In 2017, the Department of Justice reversed the federal government’s position in *Veasey v. Perry*, which involved a challenge to what is often considered to

²⁰ *Id.* at 32.

be the nation's strictest state voter ID law.²¹ The reversal came after the Administration had spent almost six years arguing that the Texas voter ID law intentionally discriminated against minorities.²² Even the Fifth Circuit Court of Appeals, one of the most conservative circuits in the nation, ruled that the Texas voter ID law discriminated against minority voters.²³

- i. Will you make a commitment to review the Department of Justice's position in this case?
- ii. Will you report your conclusions to this Committee within the first 60 days of your tenure should you be confirmed?

RESPONSE: (b) (5)



18. Since the Supreme Court's decision in *Shelby County v. Holder*,²⁴ states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate a voter at the polls.²⁵ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible

²¹ Pam Fessler, *Justice Department Reverses Position on Texas Voter ID Law Case*, NPR (Feb. 27, 2017), <https://www.npr.org/2017/02/27/517558469/justice-department-reverses-position-on-texas-voter-id-law-case>.

²² *Id.*

²³ See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

²⁴ 570 U.S. 529 (2013).

²⁵ Justin Levitt, *The Truth About Voter Fraud*, BRENNAN CTR. FOR JUSTICE 6 (2007), <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

instances of voter fraud.²⁶ Despite this, President Trump, without citation, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion? Please be specific.
- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?
- c. Do you believe that voter ID laws can disenfranchise otherwise eligible minority voters?
- d. Please provide an example of a voter ID law that you believe does not disenfranchise otherwise eligible minority voters.

RESPONSE: (b) (5)



19. In the twenty-first century, voter ID laws are often considered the modern-day equivalent of poll taxes. These laws disproportionately disenfranchise people of color and people of lesser means.²⁷

- a. Do you agree that voter ID laws disproportionately disenfranchise people of color and people of lesser means? If not, how do you account for the statistical evidence to the contrary?
- b. Study after study has shown that in-person voter fraud is extremely rare.²⁸ Do

²⁶ Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast>.

²⁷ See, e.g., Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You're Poor, Black, Latino or Elderly*, WASH. POST (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html; Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355>.

²⁸ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

you believe that in-person voter fraud is a widespread problem in American elections?

RESPONSE: (b) (5)

20. When you were Chief Legal Counsel to the Platform Committee of the Republican National Convention, it took the following position on crime in the United States: “Liberals do not understand this simple axiom: criminals behind bars cannot harm the general public.”²⁹

a. What role did you play in drafting this section of the Republican Platform?

RESPONSE: (b) (5)

b. Do you believe that locking more people up makes us safer?

RESPONSE: (b) (5)

c. In your hearing you spoke about the importance of the First Step Act.³⁰ This legislation takes a meaningful first step to fix our broken criminal justice system and will release thousands of people in federal prisons who are there under draconian drug laws. Do you understand the how a broken and unfair criminal justice system actually makes us less, not more, safe?

RESPONSE: (b) (5)

d. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.³¹ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.³²

i. After reviewing these statistics, do you still believe there is a direct link between increases in a state’s incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain how you justify your views.

ii. Do you believe there is a direct link between decreases in a state’s

²⁹ GOP Platform, *supra* note 3, at 37.

³⁰ *Nominations Hearing*, *supra* note 1.

³¹ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

³² *Id.*

incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

RESPONSE: (b) (5)

21. According to a Brookings Institution study, blacks and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.³³ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.³⁴ These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.³⁵ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.³⁶

- a. Do you believe there is implicit racial bias in our criminal justice system?
- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?
- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.
- d. If you are not familiar with implicit racial bias – will you commit to complete implicit racial bias training within the first 30 days of your tenure at the Department of Justice should you be confirmed?

RESPONSE: (b) (5)

³³ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

³⁴ *Id.*

³⁵ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

³⁶ *Id.*

22. On May 10, 2017, Attorney General Sessions changed the Department of Justice's charging and sentencing policy and directed all federal prosecutors to "pursue the most serious, readily provable offense."³⁷ After this announcement, I wrote a letter with Senators Mike Lee, Dick Durbin, and Rand Paul asking a series of question regarding the policy change because we believed the new policy would "result in counterproductive sentences that do nothing to make the public safer."³⁸

- a. If confirmed, will you review Attorney General Sessions' decision to revert back to an old Department of Justice policy to "pursue the most serious, readily provable offense"?

RESPONSE: (b) (5) (b) (5) Per CRM

- b. Will you make a commitment to conduct a review of the effect the new charging and sentencing policy is having on crime deterrence, public safety, and reducing recidivism and report your findings to the Senate and House Judiciary Committees?

RESPONSE: (b) (5) (b) (5) Per CRM

- c. The letter referenced above highlighted the cases of Weldon Angelos and Alton Mills.³⁹ Do you believe the punishment fit the crime in those two cases?

RESPONSE: (b) (5) (b) (5) Per CRM

³⁷ Memorandum from Jeff Sessions, Att'y Gen., to the U.S. Dep't of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

³⁸ Letter from Sen. Mike Lee et al. to Jeff Sessions, Att'y Gen., on the Department of Justice Charging and Sentencing Policy (June 7, 2016), <https://www.scribd.com/document/350652153/6-7-17-Letter-to-the-Attorney-General-on-DOJ-Charging-and-Sentencing-Policy-FINAL-SIGNED>.

³⁹ *Id.*

- d. If you are not familiar with those cases, do you commit to have the Department of Justice respond to the May 2017 letter regarding whether it believed the punishment fit the crime in those two instances?

RESPONSE: (b) (5)

(b) (5) Per CRM

- e. Will you make a commitment to conduct a review of all federal criminal offenses carrying mandatory minimum sentences and reporting to the Senate and House Judiciary Committees those that you believe are unfair and need adjustment?

RESPONSE: (b) (5)

(b) (5) Per CRM

- f. According to Attorney General Sessions's memorandum, "prosecutors are allowed to apply for approval to deviate from the general rule that they must pursue the most serious, readily provable offense."⁴⁰ Do you commit to providing the Senate and House Judiciary Committees information detailing the number of requests that have been made to deviate from the Department's charging policy and a breakdown of whether those requests were approved or denied?

RESPONSE: (b) (5)

(b) (5) Per CRM

23. In 2015, the Presidential Task Force on 21st-Century Policing issued a report setting forth recommendations focused on identifying best practices for policing and

⁴⁰ Memorandum from Jeff Sessions, Att'y Gen., to the U.S. Dep't of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

recommendations that promote effective crime reduction while building public trust.⁴¹ Have you read the report? If not, do you intend to read the report?

RESPONSE: (b) (5)

24. Communities of color have the lowest rates of confidence in law enforcement. A poll from 2015-2017 indicated that 61 percent of whites had confidence in police, only 45 percent of Hispanics and 30 percent of blacks felt the same way.⁴² If confirmed as Attorney General, what policies and practices will you implement to rebuild trust between law enforcement and minority communities?

RESPONSE: (b) (5)

25. The Deputy Attorney General oversees the Office of Legal Policy (OLP) at the Department of Justice. OLP plays a critical role in the selection of judicial nominees.

- a. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

RESPONSE: (b) (5)

- b. Do you believe the Trump Administration has done a good job appointing people of color to the federal bench? If so, please explain your views.

RESPONSE: (b) (5)

⁴¹ FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST-CENTURY POLICING (May 2015),

https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁴² Jim Norman, *Confidence in Police Back at Historical Average*, GALLUP (July 10, 2017), <https://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx>.

26. On April 6, 2018, Attorney General Sessions announced a “zero tolerance” policy for criminal illegal entry and directed each U.S. Attorney’s Office along the Southwest Border to adopt a policy to prosecute all Department of Homeland Security referrals “to the extent practicable.”⁴³ A month later, on May 7, 2018, the Trump Administration announced that the Department of Homeland Security will refer any individuals apprehended at the Southwest Border to the Department of Justice.⁴⁴ This policy resulted in thousands of immigrant children being cruelly separated from their parents.⁴⁵

- a. Do you agree with Attorney General Sessions’s decision to institute a “zero tolerance” policy?

RESPONSE: (b) (5)



- b. Do you believe it is humane to separate immigrant children and their parents after they are apprehended at the U.S.-Mexico border?

RESPONSE: (b) (5)



27. On September 27, 2016, I sent a letter to then-Secretary Jeh Johnson opposing family detention and urging the Obama Administration to end its use of the practice.⁴⁶ The letter said, “Detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be

⁴³ Press Release, U.S. Dep’t of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

⁴⁴ Jeff Sessions, Att’y Gen., Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

⁴⁵ Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX (June 15, 2018) <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

⁴⁶ Letter from Sen. Patrick Leahy et al. to Jeh Johnson, Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 27, 2016), <https://www.leahy.senate.gov/imo/media/doc/Letter%20to%20Sec.%20Johnson%20re%20Berks%20Family%20Detention%20Center.pdf>.

addressed through other means.”⁴⁷ The letter also noted that “[t]here is strong evidence and broad consensus among health care professionals that detention of young children, particularly those who have experienced significant trauma as many of these children have, is detrimental to their development and physical health.”⁴⁸

- a. Do you agree that detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means?
- b. Do you believe that detention of children—regardless of whether it is with or without their parents—has a detrimental effect on their development and physical health?

RESPONSE: (b) (5)



28. The 2012 Republican Platform said, “We support changing the way that the decennial census is conducted, so that citizens are distinguished from lawfully present aliens and illegal aliens. In order to preserve the principle of one-person, one-vote, the apportionment of representatives among the States should be according to the number of citizens.”⁴⁹

Census experts and senior Census Bureau staff agree that a last-minute, untested citizenship question could create a chilling effect and present a major barrier to participation in the 2020 Census. Many vulnerable communities do not trust the federal government’s commitment to maintaining the confidentiality of Census data and are fearful that their responses could be used for law enforcement, including immigration enforcement, purposes. A citizenship question would exacerbate their concerns.

Alarming documents revealed in the ongoing citizenship-question litigation indicate that DOJ staff were open to reevaluating a formal Justice Department legal opinion from 2010

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ GOP Platform, *supra* note 3, at 12.

that there are no provisions within the USA PATRIOT Act that can be used to compel the Commerce Secretary to release confidential census information—that is, that supersede the strict confidentiality protections in the Census Act. In November, I joined my colleagues Senator Schatz and Senator Reed in a letter to Assistant Attorney General Eric Dreiband, seeking a clarification of the existing law, a commitment to maintaining the confidentiality of information collected by the Census Bureau, and assurances that personal Census responses cannot be used to the detriment of any individual or family, by the Justice Department, the Department of Homeland Security, or any other agency of government at any level.

Although litigation has continued for months, a federal district court issued an exceptionally thorough and thoughtful ruling that blocked the Commerce Department from adding the citizenship question to the Census.

- a. What role did you play in drafting this portion of the 2012 Republican Platform?

RESPONSE: (b) (5)

- b. Do you agree that the confidentiality of Census data is fully protected by law?

RESPONSE: (b) (5)

- c. Will you make a commitment that, if confirmed, you will ensure the Justice Department abides by all laws protecting the confidentiality and nondisclosure of Census data, and that you will prohibit the use of Census data for the purposes of immigration-related enforcement against any person or family?

RESPONSE: (b) (5)

- d. Will you make a commitment that, if confirmed, you will reaffirm the Office of Legal Counsel's interpretation that the USA PATRIOT Act does not weaken or change any confidentiality protection embodied in the Census Act?

RESPONSE: (b) (5)

29. At the hearing, you disagreed with the New York Times' characterization that were a "chief author" of the proposal to roll back the Obama Administration's Corporate Average Fuel Economy (CAFE) standard rule.⁵⁰ Instead, you described yourself as playing more of a "managerial" role in the promulgation of the proposed freeze of the

⁵⁰ Coral Davenport, *Top Trump Officials Clash Over Plan to Let Cars Pollute More*, N.Y. TIMES (Jul. 27, 2018), <https://www.nytimes.com/2018/07/27/climate/trump-auto-pollution-rollback.html>.

CAFE standards—in contrast to statements from 11 sources which said you were an advocate and drafter of the proposal.⁵¹

- a. What exactly was your role with regard to the Trump Administration’s proposed CAFE standards?

RESPONSE: (b) (5)

- b. Recent reporting has detailed the mathematical errors and calculation mistakes—all resolved in favor of rolling back the standard—rife in the Trump Administration’s justification for freezing the fuel economy standards. In comments submitted to the Office of Management and Budget and the Department of Transportation about these proposed changes, the Environmental Protection Agency (EPA) stated, “EPA analysis to date shows significant and fundamental flaws” that “make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards.”⁵² Why were the extensive errors flagged by the EPA not addressed?

RESPONSE: (b) (5)

30. In response to the Supreme Court’s mandate in *Massachusetts v. EPA* that the EPA must regulate greenhouse gases, the EPA made an “endangerment finding” that carbon dioxide is a threat to human welfare. When the EPA sent this endangerment finding to OMB—where you were General Counsel—“OMB staff refused to open it, and it sat in limbo for months.”⁵³ Beyond just ignoring the finding, the Bush Administration “walked a tortured policy path, editing its officials’ congressional testimony, refusing to read documents prepared by career employees and approved by top appointees, [and] requesting changes in computer models to lower estimates of the benefits of curbing carbon dioxide. . . .”⁵⁴

⁵¹ *Id.*

⁵² Letter from Sen. Tom Carper, Ranking Member, U.S. Senate Comm. on Env’t & Pub. Works, to Sec’y Elaine L. Chao, U.S. Dep’t of Transp. & Andrew Wheeler, Acting Adm’r, Env’tl. Prot. Agency (Oct. 16, 2018), https://www.epw.senate.gov/public/_cache/files/e/6/e66d6d50-e3c5-42c1-9663-c1ea1d2215dc

/3752E5E73547A5D722D1BEADA0E69405.10.16.2018-cafe.pdf.

⁵³ Juliet Eilperin & R. Jeffrey Smith, *EPA Won’t Act on Emissions This Year*, WASH. POST (July 11, 2008), http://www.washingtonpost.com/wp-dyn/content/article/2008/07/10/AR2008071003087_pf.html.

⁵⁴ *Id.*

- a. In your assessment, is climate change real?

RESPONSE: (b) (5)

- b. In your assessment, what is the relationship between human activities, particularly greenhouse gas emissions, and climate change?

RESPONSE: (b) (5)

- c. In your assessment, can efforts to reduce greenhouse gas emissions today have an impact on climate change?

RESPONSE: (b) (5)

- d. If a corporation has contaminated the environment and jeopardized the public health of an American community, should residents of that community be able to seek justice in our courts?

RESPONSE: (b) (5)

- e. Research has shown that climate change disparately impacts poor communities⁵⁵ and indigenous communities.⁵⁶ Do you agree? Have you ever studied the issue?

RESPONSE: (b) (5)

⁵⁵ Maxine Burkett, *Behind the Veil: Climate Migration, Regime Shift, and a New Theory of Justice*, 53 Harv. C.R.- C.L. L. Rev. 445, 447 (Fall 2018).

⁵⁶ Rebecca A. Tsosie, *Indigenous People and Environmental Justice: The Impact of Climate Change*, 78 U. Colo. L. Rev. 1625, 1628 (Fall 2007).

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR HARRIS

1. On March 25, the Justice Department changed its position in a case challenging the Affordable Care Act, and is now arguing that the entire law should be struck down. If the court adopts the Justice Department's position, the results would be devastating for all those who benefit from the Affordable Care Act. Nearly 20 million Americans could lose their health insurance. Protections for pre-existing conditions would be eliminated. And seniors would pay more for prescription drugs.

In 2009, you referred to the Affordable Care Act as a "proposed government takeover of health care." You also served on the Advisory Board of the National Federation of Independent Business when that organization was the lead plaintiff challenging the Affordable Care Act.

- a. Given your opposition to the ACA and your prior board service for a litigant, will you commit to consulting with career ethics officials at the Justice Department to determine whether to recuse yourself from the pending challenge to the Affordable Care Act?

RESPONSE: (b) (5)

- b. If career DOJ officials recommend that you recuse, will you commit to following their recommendation?

RESPONSE: (b) (5)

2. For 50 years, the Voting Rights Act has protected against racial discrimination in voting. Section 2 of the Voting Rights Act prohibits states from implementing racially discriminatory voting practices.

During the 2018 midterms, we saw several instances of voter suppression. In Georgia, the Republican candidate for governor remained in his position as secretary of state—the office that oversees state elections. The Republican candidate then used his position as secretary of state to issue directives that could have tilted the election in his favor.

- a. If confirmed, will you commit to investigating this event to determine whether it warrants Section 2 enforcement or any other type of enforcement?

RESPONSE: (b) (5)

- b. If you find that Section 2 does not apply, will you commit to working with me to determine whether the statute should be amended—or a new one passed—to address this type of scenario?

RESPONSE: (b) (5)

In North Dakota, new voter ID rules required voters to show that they had a current residential address. Since many Native Americans use P.O. boxes instead of residential addresses, this meant that many Native IDs were not accepted at polling places.

- a. If confirmed, will you commit to reviewing North Dakota’s voter ID law to determine whether it warrants Section 2 enforcement?

RESPONSE: (b) (5)

3. During Attorney General Barr’s confirmation hearing, he referred to extreme risk protection laws as “the single most important thing we can do in the gun control area to stop these mass shootings from happening in the first place.”

- a. Do you agree with Attorney General Barr’s support for extreme risk protection laws?

RESPONSE: (b) (5)

- b. If confirmed, will you request that the Justice Department support Senator Feinstein’s Extreme Risk Protection Order Act of 2019?

RESPONSE: (b) (5)

4. Last year, the administration released the Fourth National Climate Assessment, which concluded that “the evidence of human-caused climate change is overwhelming and continues to strengthen, that the impacts of climate change are intensifying across the country, and that climate-related threats to Americans’ physical, social, and economic well-being are rising.”

Since 2012, you have been a member of the National Association of Scholars, an organization that has questioned the scientific consensus on climate change. Do you accept the scientific consensus that human-caused climate change is real and that we are already experiencing its impacts?

RESPONSE: (b) (5)

5. On his last day as Attorney General, Jeff Sessions issued a memo making it more difficult for Justice Department attorneys to obtain consent decrees. During Attorney General Barr's confirmation hearing, he committed to convening a meeting with civil rights groups to listen to their concerns about the Justice Department's current policy within 120 days. It is my understanding that the meeting has still not occurred. If confirmed, will you commit to joining this meeting and ensuring that it takes place by the June 14 deadline?

RESPONSE: (b) (5)

6. In 2012, you served as Chief Legal Counsel to the Republican National Convention's Platform Committee. That year, the Republican National Convention included platform language supporting a "human life amendment to the Constitution," also known as a personhood amendment. So-called personhood measures provide that pregnancy begins at conception. If adopted, such an amendment could effectively overturn *Roe v. Wade* and ban many common forms of birth control. Will you commit that, if confirmed, you will not seek to overturn *Roe* and *Casey*?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR GRASSLEY

1. At the hearing, I pointed out my concerns about concentration and consolidation in the health care industry and my concerns about the high cost of drugs. I have written and expressed my concerns to the Department of Justice (DOJ) Antitrust Division about certain mergers, and have raised concerns with DOJ and the Federal Trade Commission (FTC) about certain practices in the health care and pharmaceutical industries that I have heard could be anti-competitive.

- a. If confirmed, will you make sure that the Antitrust Division carefully scrutinizes transactions and mergers in the health care and pharmaceutical industries? Will you make sure that the Antitrust Division looks into anti-competitive and abusive practices in these sectors that reduce choice and keep costs high for consumers?

RESPONSE: (b) (5)

- b. If confirmed, will you commit to ensuring that health care and prescription drug antitrust issues are a top priority for the DOJ?

RESPONSE: (b) (5)

- c. If confirmed, will you commit to collaborating with the FTC in their efforts in this area?

RESPONSE: (b) (5)

2. As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector. I believe that the Antitrust Division needs to dedicate more time and resources to agriculture competition issues. DOJ must play a key role in limiting monopsonistic and monopolistic behavior in agriculture.

- a. If confirmed, can you assure me that agriculture antitrust issues will be a priority for DOJ?

RESPONSE: (b) (5)

3. During consideration of the Hatch-Goodlatte Music Modernization Act (MMA), several colleagues and I inquired about the DOJ Antitrust Division's Judgement Termination Program, specifically as it relates to the consent decrees governing ASCAP and BMI, the two largest performing rights organizations. Because of concerns about the impact that a potential termination of these decrees would have on music industry stakeholders, DOJ assured us that there would be a process of timely consultation and substantial stakeholder input under which these consent decrees would be considered prior to any possible termination. The MMA also provides for congressional consultation and oversight of any DOJ action regarding these consent decrees.

- a. If confirmed, can you ensure that DOJ will provide this Committee with ongoing updates and meaningful advanced notice regarding any proposed modification or termination of the ASCAP and BMI consent decrees?

RESPONSE: (b) (5)

- b. If confirmed, will you commit to working closely with this Committee if DOJ decides to modify or terminate these consent decrees so that Congress can take any necessary legislative action prior to modification or termination of the decrees?

RESPONSE: (b) (5)

4. The *First Step Act* requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will lead to more inmates being put in prerelease custody, such as residential reentry centers (RRCs). That means we have to make sure that RRCs are appropriately funded.

- a. Will you commit to making sure that there is enough space in RRCs to meeting the needs of prisoners who qualify through earned and good time credits for prerelease custody?

RESPONSE: (b) (5)

5. The *First Step Act* requires the Bureau of Prisons (BOP) to recalculate good behavior credits for all inmates. Previously, inmates could earn up to 47 days per year toward early release for good behavior. The new law allows BOP to apply 54 days per year. However, it now seems BOP plans to delay this recalculation for months which could impact thousands of inmates who should be released under the new law. I don't see any reason to keep people in prison when the law clearly states they should be released.

- a. In your opinion, what are the justifications for delaying this recalculation and would you foresee any issues if Congress made this good time credit recalculation effective immediately?

RESPONSE: (b) (5)

6. Since 2007, DOJ has used the Justice Reinvestment Initiative to support states that want to take a fresh look at their sentencing and corrections systems in order to improve the public safety return-on-investment on each taxpayer dollar. The Department has supported these states as they implement policies to reinvest savings from reduced correctional populations into evidence-based programs that reduce recidivism, helping states to both cut costs and crime at the same time.

- a. Do you support the Justice Reinvestment Initiative and do you anticipate any modifications in its administration?

RESPONSE: (b) (5)

7. Over the years, Congress has appropriated billions of dollars to be used for DOJ grants. These grants are then awarded by DOJ to fund state, local, and tribal governments and nonprofit organizations for a variety of important criminal justice-related purposes. However, at times there have been reports of duplicative grant programs, as well as fraud and abuse.

- a. If confirmed, will you commit to working with this committee to remove these duplicative programs as well as root out waste, fraud, and abuse in DOJ grant programs?

RESPONSE: (b) (5)

8. Illegal drug traffickers and importers can currently circumvent the existing scheduling regime established in the Controlled Substances Act by altering substances in a lab, which thereby creates a drug that is legal but often dangerous. Under the Controlled Substances Act, an eight-factor analysis of a substance must be conducted to determine potential abuse and accepted medical use. Unfortunately, this is a time-consuming process. With the onslaught of dangerous synthetic drugs continuing to affect thousands of Americans, we must be more proactive and efficient in identifying and prosecuting cases with these substances.

- a. What do you see as an effective way to address the increasing number of synthetic analogues that enter our country?

RESPONSE: (b) (5)

- b. How can a balance be struck between analyzing drugs for medical use while protecting Americans from these substances' potential dangers and holding drug traffickers responsible for distributing synthetic drugs?

RESPONSE: (b) (5)

9. For nearly fifty years, the University of Mississippi has had the sole contract with the National Institute on Drug Abuse (NIDA) to grow cannabis for research purposes. To expand the number of manufacturers, the Drug Enforcement Administration (DEA) submitted a notice in the Federal Register on August 11, 2016, soliciting applications for licenses to manufacture marijuana for research purposes. However, over two years have passed without any new schedule I marijuana manufacturer registrations. Your predecessor, Attorney General Sessions, testified on April 25, 2018 at the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, stating that “[w]e are moving forward and we will add, fairly soon . . . additional suppliers of marijuana under the Controlled [Substances Act].” On July 25, 2018, I sent a letter with other Senators to Attorney General Sessions asking for an update on marijuana manufacturer applications.

- a. Will you review this letter and assess the status of the pending marijuana manufacturer applications?

RESPONSE: (b) (5)

- b. Do you intend to support the expansion of marijuana manufacturers for scientific research?

RESPONSE: (b) (5)

10. Along with Senator Feinstein, I introduced legislation that expands research into a derivative of marijuana known as cannabidiol, or CBD. The Food and Drug Administration (FDA) recently approved Epidiolex, whose main active ingredient is CBD. This FDA-approved drug has since been placed in Schedule V of the Controlled Substances Act. While this is a positive step and will provide a new treatment option for those with two types of intractable epilepsy, it is my understanding that this scheduling action relates only to CBD in an FDA-approved formulation. Senator Feinstein and I wrote to DOJ and Health and Human Services (HHS) on two occasions requesting that a scientific and medical evaluation of CBD be conducted. The first letter was sent on May 13, 2015, and the second letter was sent on November 18, 2018. Both DOJ and HHS agreed to conduct a medical and scientific evaluation of CBD independent of marijuana in 2015.

- a. What is the status of this request?

RESPONSE: (b) (5)

- b. What is the anticipated date of completion?

RESPONSE: (b) (5)

- c. Do you view the substance CBD as in Epidiolex as a separate substance from CBD in marijuana?

RESPONSE: (b) (5)

- d. Do you believe that marijuana-derived CBD is separate and distinct from hemp-derived CBD?

RESPONSE: (b) (5)

11. Today's global economy facilitates commerce and a strong American financial system. However, most money within global transactions flows through U.S. banks, which unfortunately makes our financial institutions prone to exploitation by terrorists, drug kingpins, and human traffickers who need to fund their operations. Congress has made efforts to strengthen our laws and make it more difficult for terrorists to move money. However, it has been almost 15 years since Congress took action and updated anti-money laundering laws.

- a. What do you see as the biggest challenges for DOJ in combatting money laundering in our current age of digital currency, global economies, and terrorist financing?

RESPONSE: (b) (5)

- b. What additional tools do you believe would be helpful in addressing money laundering?

RESPONSE: (b) (5)

- c. My bill, the *Combating Money Laundering, Terrorist Financing, and Counterfeiting Act*, seeks to improve our nation's anti-money laundering laws. If confirmed, will you commit to working with me to pass meaningful legislation to address money laundering?

RESPONSE: (b) (5)

12. China recently stated that it plans to place all fentanyl-like substances on Schedule I in China. This could dramatically decrease the amount of fentanyl and its analogues that flow into the United States.

- a. What can you do in your role as Attorney General to ensure that China executes its promise to place these drugs in Schedule I?

RESPONSE: (b) (5)

- b. What can we do within our own borders to hold China accountable? Do you have any legislative recommendations?

RESPONSE: (b) (5)

13. DOJ is the administrator of immigration laws and the Attorney General has statutory authority to implement and execute these laws, including asylum claims. Over the past few years, we've seen the number of asylum claims filed increase drastically. As many as 80% of these claims are eventually denied as having no legal merit. At the same time, DOJ recently reported that the total asylum backlog exceeds 700,000 cases. 8 U.S. Code Section 1158 clearly states that grants of asylum should only be extended to those applicants who can show that their home country government persecuted them on the base of race, religion, nationality, membership in a particular social group, or political opinion. Last year, then-Attorney General Sessions took up the case of *Matter of A-B*, which restored asylum adjudications to original congressional intent, reversing an Obama-era decision to expand grounds of asylum without Congressional approval.

- a. What is your position for defining the threshold for an initial positive finding of credible fear and the grant of asylum?

RESPONSE: (b) (5)

- b. What are the implications for legitimate asylum seekers when our asylum backlog is in this dire state?

RESPONSE: (b) (5)

- c. If confirmed, will you commit to working with Congress to achieve meaningful bipartisan asylum reform?

RESPONSE: (b) (5)

14. Previous administrations have refused to prosecute many previously deported aliens who illegally re-entered the United States. If confirmed, will you prioritize felony illegal re-entry cases?

RESPONSE: (b) (5)

15. There's an ongoing debate about the legality of so-called "sanctuary jurisdictions." Can DOJ and federal law enforcement effectively do their jobs when states and cities across the country refuse to comply with the law?

RESPONSE: (b) (5)

16. Will you commit to enforcing immigration detainer statutes and regulations, and will you use all available tools at your disposal to encourage compliance?

RESPONSE: (b) (5)

17. In 2018, DOJ announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it's the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it's important that the Department continue its investigative and oversight work.

- a. If confirmed, will you ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?

RESPONSE: (b) (5)

18. Current DOJ regulations give the Attorney General the discretion to release certain reports to the public concerning the work of a Special Counsel. If confirmed, will you commit to erring on the side of transparency in releasing information that's in the public interest?

RESPONSE: (b) (5)

19. In February 2018, then-Associate Attorney General Rachel Brand announced that DOJ would begin reviewing the fairness of class action settlements, pursuant to the Attorney General's authority under the Class Action Fairness Act of 2005 (CAFA)—a bill on which I was the lead sponsor. Congress passed CAFA with bipartisan support to push back against certain abuses in the class action system, particularly where lawyers were cashing in at the expense of class members. I was pleased to hear that DOJ began exercising its review authority under CAFA last year by filing statements of interest where certain proposed settlements appeared unfair to class members.

- a. If confirmed, will you ensure DOJ continues this work in protecting class members from unfair settlements?

RESPONSE: (b) (5)

20. Every day, the Americans with Disabilities Act (ADA) protects countless individuals with disabilities, ensuring physical access to "any place of public accommodation." For this critically important law to be effective, however, it must be clear so that law abiding Americans can faithfully follow the law. Currently, there is confusion over whether the ADA applies to websites, and if so, what standards should be used to determine website compliance. This lack of clarity benefits only the trial lawyers, and does nothing to advance the cause of accessibility.

- a. If confirmed, will you commit to promptly take all necessary and appropriate actions—including filing statements of interest in pending litigation—to help resolve the current uncertainty?

RESPONSE: (b) (5)

- b. More broadly, what other steps will you recommend DOJ take under your leadership to combat abusive litigation practices under the ADA?

RESPONSE: (b) (5)

- 21. In 2010, I authored a change to the False Claims Act that prevents the dismissal of a qui tam action if the government is in opposition to such dismissal and if the action is based on information that may have been publicly disclosed. The purpose of 31 U.S.C. 3730(e)(4) is to allow the federal government to maximize recoveries for taxpayers by using qui tam relators as a source of information regarding fraud about which the government may not be fully aware. Will you commit to use this provision to prevent unnecessary dismissals of meritorious qui tam cases, especially those where the affected agency supports the continuation of the litigation?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR CORNYN

1. In your testimony, you discussed "red flag laws" and the concept of Extreme Risk Protection Orders (ERPOs) as a possible means of keeping firearms out of the hands of dangerously mentally-ill individuals. Of course that is a goal we all share. As I'm sure you are aware, several states have enacted ERPO laws to date; however, these laws have included varying levels of due process protections, some of which have been subject to abuse. As a result, this issue has become a cause of concern for many law-abiding gun owners. Would you agree that at a minimum, state ERPO laws should include robust front-end due process protections, penalties against the filing of frivolous charges, and mental health treatment for those who pose a significant danger to themselves or others?

RESPONSE: (b) (5)



2. In your testimony, you stated that you have opposed bans on certain semi-automatic firearms (often misnamed as "assault weapons"). You also stated your long standing belief that the Second Amendment guarantees the fundamental, individual right to keep and bear arms for all law-abiding Americans - a belief that predates the Supreme Court's Heller and McDonald decisions. You also mentioned that, in looking at firearms regulations, it is appropriate to consider whether the burden on law-abiding individuals is proportionate to any general benefit to public safety. Would you further clarify that last statement, in light of Justice Scalia's holding in Heller, that the enumeration of the Second Amendment right "takes out of the hands of government the power to decide whether the right is really worth insisting upon"?

RESPONSE: (b) (5)



QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR TILLIS

1. It is increasingly clear that technology provides very useful tools in crime fighting and crime prevention, especially when they are in an integrated system. I would like to see Federal support for the deployment of these technologies increased. Most gunshot incidents, for example, go unreported to the police. Gunfire detection and location technology, where it has been deployed, and that includes some communities in my state, has helped police respond to more gunshot incidents, and in a safer and timely way. This enables police to collect the shell casings, interview witnesses, and occasionally catch a fleeing suspect. When those shell casings are run through another technology, the National Integrated Ballistic Identification System – NIBIN – law enforcement agencies can determine if the gun has been used in other crimes and can focus their investigation. The use of cameras in public spaces is another positive tool. Will you support increased Federal support to assist localities to deploy these kinds of technologies?

RESPONSE: (b) (5)

2. Access to digital evidence has grown increasingly important in investigations and prosecutions of criminal cases at the local, state, and federal levels. Investigators increasingly obtain data from mobile communications devices, social media accounts, internet browsing histories, and myriad other data sources to help them generate leads, identify suspects, and build their cases. Yet, as the Center for Strategic and International Studies (CSIS) recently reported, law enforcement agencies are facing significant challenges impeding their ability to effectively access digital evidence to support criminal investigations.

The CSIS report found that nearly one-third of law enforcement professionals cited difficulties in identifying which service providers had access to digital evidence as their largest challenge, followed by difficulties in obtaining evidence from providers, and a lack of resources needed to access and analyze data from devices.

- a. As Attorney General, what steps will you take to promote digital evidence training programs for federal, state and local law enforcement officers?

RESPONSE: (b) (5)

- b. Will you conduct a review of existing programs to promote digital evidence training and report back to this Committee on those efforts and any steps that can be taken to improve them?

RESPONSE: (b) (5)

- 3. I'm concerned that the Department of Justice—which has the legal authority to prosecute internet based platforms which promote prostitution and facilitate sex trafficking—rarely does so. While it is encouraging that DOJ finally cracked down on certain bad actors last year, these actions came years too late for many victims of sex-trafficking.
 - a. What steps will you take to continue the Department's work to prosecute existing internet based platforms that promote prostitution and sex-trafficking?

RESPONSE: (b) (5)

- b. What will you do as Attorney General to anticipate and crack down on emerging technologies used by sexual exploiters to engage in prostitution and human trafficking?

RESPONSE: (b) (5)

- c. What protective measures can you take to increase federal, state and local law enforcement's understanding of emerging modalities of sexual exploitation?

RESPONSE: (b) (5)

- d. How can the Department of Justice better coordinate and collaborate with social media companies to eradicate criminal exploitation that may be occurring on their platforms?

RESPONSE: (b) (5)

- 4. For the last few decades the federal government has made a concerted effort to fight sex trafficking. We've taken steps to protect victims and help them escape sexual exploitation. We've also cracked down on sex traffickers, enhancing criminal penalties for sex trafficking and providing the Department with more tools and resources to prosecute them.

Unfortunately, one thing we haven't done well is focus on prosecuting those who solicit and purchase sex. In recognition of this, last year, Congress passed the Abolish Human Trafficking Act of 2017, which requires the Department to create a national strategy to reduce demand for human trafficking victims. The law also requires the Department to issue guidance urging Department components to prosecute those who purchase sex from minors and trafficking victims.

- a. Will you commit to finalizing and issuing the guidance required by the Abolish Human Trafficking Act of 2017?

RESPONSE: (b) (5)

- b. How will you increase Department efforts to crack down on those who purchase sex commercially?

RESPONSE: (b) (5)

- c. Will you direct DOJ's criminal division to provide technical and, to the extent allowed by law, financial support to state and local law enforcement efforts aimed at prosecuting commercial sex buyers?

RESPONSE: (b) (5)

5. Every year, hundreds of American-citizen children are abducted to a foreign country by one of their parents. These children are usually taken from the parent who has custody by their ex-spouse. The federal government has several tools to combat international parental child abduction but as Senator Feinstein and I noted in a letter to Secretary Pompeo, we rarely if ever use all of these tools. One of the most underused tools is prosecution of the taking parent—and their accomplices—under the International Parental Kidnapping Crime Act. That law makes it a federal crime to remove an American-citizen child from the United States with intent to obstruct custodial rights and individuals can face up to 3 years in prison for violations of its provisions.

According to conversations my office has had with victim-advocates, it appears the Department rarely prosecutes individuals under the IPKCA.

- a. As Attorney General, will you commit to prosecuting those who commit and assist in international parental child kidnapping to the fullest extent allowed by law?

RESPONSE: (b) (5)

6. Another complaint victims have brought to my attention is the general lack of knowledge about this issue from federal, state and local law enforcement. Many law enforcement officers don't even realize a parental kidnapping is a crime. As Attorney General, what will you do to provide better training and information to federal, state and local law enforcement officers? Specifically, what can or will you do to teach our law enforcement officers about how the potential for prosecution under the IPKCA can be both a deterrent and remedy for international parental kidnapping?

RESPONSE: (b) (5)

7. I'd like to commend President Trump and former Attorney General Jeff Sessions for their commitment to protecting the intellectual property rights of American innovators. Domestically and internationally intellectual property crime is on the rise. Intellectual property crime not only threatens our nation's economic health and well-being, but it also poses a national security risk. Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim (DEL RA HEEM) have made great strides in prosecuting intellectual property theft. If confirmed as Attorney General, what will you do to continue the efforts of General Sessions, Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim?

RESPONSE: (b) (5)

8. As you know, certain countries have been more egregious in their theft of American intellectual property. China is perhaps the most notorious, but India, Brazil and Russia are also bad actors. How will you approach international intellectual property theft and work with your foreign counterparts to preserve and protect the property rights of American innovators?

RESPONSE: (b) (5)

9. Does the Department need additional tools, resources or legal authorities to better combat international IP crime?

RESPONSE: (b) (5)

10. The BOP recently reported over 16,000 prisoners were on a wait-list for basic literacy programs. The First Step Act will provide some funding to support prison programming, but there is also a lot of room for greater partnership with volunteer faith-based and community-based groups that provide programming without government funding.

- a. How will you go about ensuring there is a focus on increasing the number and quality of programs available through partnerships with programs that do not take direct funding from the government?

RESPONSE: (b) (5)

- b. Will you encourage in-prison programs proven to reduce recidivism offered by faith-based organizations to be considered as a reentry program in addition to being offered through the chaplaincy? (Background: Currently, faith-based organizations are generally only considered for programming under the chaplaincy by the BOP. The chaplaincy has strict limits on the number of volunteers and hours provided by each faith tradition, even if the program is holistic, offering more than explicitly

religious activities, open to prisoners of any faith, and does not take any government funding. The First Step Act states that the AG shall inform the BOP that faith-based programs proven to reduce recidivism shall qualify as a reentry program outside the chaplaincy).

RESPONSE: (b) (5)

11. The Second Chance Act provided that, "any person who provides mentoring services to an incarcerated offender is permitted to continue such services after that offender is released from prison." The First STEP Act expands that provision stating that a prisoner in prerelease custody may not be prohibited from receiving mentoring, reentry or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated. "Reentry or spiritual services" was inserted because many people leaving prison without much family support have worked closely with chapel and other faith-based volunteer mentors. These volunteers are in a place to encourage them through the difficult reentry process.

But BOP policies currently only allow specially trained mentors to remain in contact with parishioners after they release. Will you shepherd the implementation of this part of this new law, ensuring that the chapel and other faith-based volunteers are able to play a critical role in the reentry process of the men and women they have come to know and care about?

RESPONSE: (b) (5)

12. Director: The federal prison system has been without a permanent director since May of last year. The Attorney General is responsible for hiring this non-political position. Given the mandates on the federal prison system obligated under the newly passed First Step Act, how would you prioritize the hiring for this position and what qualities would you look for in a candidate?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR CRAPO

Operation Choke Point was an Obama-era initiative that targeted “high risk” industries and prevented them from fully participating in the economy. Employees of the DOJ coordinated with federal bank examiners to press financial institutions who provided financial services to certain targeted industries (including firearms and ammunition) to end these relationships. This program effectively operated as an end-run around the Second Amendment. Some Idaho businesses were directly impacted by this effort.

In July 2017, Senator Tillis and I sent a letter to your predecessor, then-Attorney General Sessions, requesting a review of all options available to ensure lawful businesses are able to continue to operate without fear of significant financial consequences, and asked for a statement ensuring that Operation Choke Point would no longer be in effect. We received a commitment from the Department that it had ended Operation Choke Point. Last November, my republican Banking Committee colleagues and I wrote FDIC Chairman Jelena McWilliams to again confirm that banks are not cutting off lawful businesses simply because they were viewed as unfavorable by certain administrations.

1. Do you believe Operation Choke Point was inappropriate and should not have been initiated?

RESPONSE: (b) (5)

2. Will you commit to review whether DOJ has actually ended Operation Choke Point?

RESPONSE: (b) (5)

3. Will you assure that, if confirmed, you will not resurrect Operation Choke Point or any other program aimed to cut off access to payment systems and banking services for merchants in politically disfavored industries?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR KENNEDY

1. The 2014 Supreme Court Case, Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., addressed the use of disparate-impact as a theory for determining discriminatory practices. While the case addressed the Fair Housing Act, the analysis has applicability to the Equal Credit Opportunity Act and the banking regulators' use of disparate impact as a theory for determining discriminatory practices. The Court held that a disparate impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing the disparity.

The Department of Justice's 1996 memorandum on identifying lender practices that may form the basis of a pattern or practice referral remains in effect. The memo references a de minimis violation, which would be of pattern or practice referral that would return the investigation from the DOJ back to the referring agency. Will you commit, upon your confirmation, to expeditiously update the 1996 guidance and clarify what the DOJ views to be a de minimis violation?

RESPONSE: (b) (5)

2. President Trump just signed my bill called the JACK Act (Justice Against Corruption on K Street) into law. This bill requires lobbyists convicted of bribery, extortion, fraud and embezzlement to disclose it. The law falls short of prohibiting corrupt lobbyists from lobbying the government. Would you support a full prohibition on lobbying by those convicted of these crimes?

RESPONSE: (b) (5)

3. Last time you were here, you said in your hearing you would be in favor of an amendment banning certain types of semiautomatic rifles. You also said you "would prefer a limitation on the clip size." Will you uphold our second amendment rights as our Attorney General and have your views changed since that hearing?

RESPONSE: (b) (5)

4. In 2010, Live Nation and Ticketmaster completed a merger of the world's largest concert promoter and with the world's leading ticket provider. The consent decree--set to expire in 2020--was designed to increase competition and prohibit Live Nation from leveraging its market power in live entertainment to obtain primary ticketing contracts. There is little dispute that the consent decree has been unsuccessful meeting that goal. Since the merger, Live Nation Entertainment has solidified its dominant position in

ticketing; some estimates suggest Ticketmaster controls 80% of primary ticketing. Today, its footprint extends beyond concert promotion and primary ticketing services to artist management, venue ownership, and secondary ticketing services. As the consent decree comes close to expiration, how will the Department of Justice be reviewing this matter? Do you think that the consent decree should be extended? In what ways could the consent decree be modified to account for TM/Live Nation's increased anti-competitive behavior?

RESPONSE: (b) (5)

5. Last year the US Attorney for the Western District of Louisiana announced that three different illegal aliens were deported for the third time to Mexico and Honduras in November alone. How can we stop illegal aliens from reentering the country repeatedly, especially in cases where they are violent criminals? These deportations are costly and use our already limited resources. Would you support deported individuals' country of origin to pay for these efforts?

RESPONSE: (b) (5)

6. I arranged for several meetings with local officials and the Attorney General regarding New Orleans' sanctuary city status. The city of New Orleans and the Department of Justice entered into a consent decree to get the city into compliance. The decree stated that the city must notify ICE within 48 hours of releasing an undocumented immigrant from jail and it must allow ICE to interview an undocumented immigrant while in custody. It is my understanding that the city has made progress on the decree but is still not fully compliant. Would you be willing to take away grant funding to sanctuary cities that refuse to enforce federal law?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR FEINSTEIN

1. In your written testimony, you said that your “goal will be to provide as much transparency as I can consistent with the law” with respect to any report produced by Special Counsel Mueller. You also said that “where judgments are to be made by me,” you would make those judgments based solely on the law. As you may be aware, recent reports suggested that President Trump’s legal team is “gearing up” to “strongly assert the president’s executive privilege” in an effort to prevent information in the report from becoming public. (Carol D. Leonnig, *A beefed-up White House legal team prepares aggressive defense of Trump’s executive privilege as investigations loom large*, WASH. POST (Jan. 9, 2019))

- a. Have you discussed with anyone the use of executive privilege in connection with Special Counsel Mueller’s report? If so, with whom, when, and what was discussed?

RESPONSE: (b) (5)

- b. If confirmed, what standards would you apply and what process would you follow in evaluating any claims of executive privilege asserted by the President?

RESPONSE: (b) (5)

- c. How will you ensure your desire to grant the public and Congress “as much transparency” as possible is not impeded by the White House’s interest in preventing full disclosure of the report?

RESPONSE: (b) (5)

2. Despite your pledge at your hearing “to provide as much transparency as [you] can,” you also indicated that you might not provide the report that Special Counsel Mueller will prepare at the conclusion of his investigation pursuant to the Justice Department’s Special Counsel regulations. Rather, you committed only to providing your own “report based on that report.” Will you commit, if confirmed, to provide to Congress the full report that Special Counsel Mueller prepares at the end of his investigation?

RESPONSE: (b) (5)

3. In June 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Steve Engel, the head of the Department of Justice Office of Legal Counsel, and to President Trump’s personal attorneys criticizing Special Counsel Robert Mueller’s

investigation. (Memo from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel re: Mueller's "Obstruction" Theory (June 8, 2018)) Please provide a complete list of everyone to whom you gave the memo, when it was provided, whether there was any communication about the memo before or after it was delivered, and why you provided it.

RESPONSE: (b) (5)

4. You testified that "It is very common for me and for other former senior officials to weigh in on matters that they think may be ill advised and may have ramifications down the road." Please provide a list of all other topics under the Justice Department's jurisdiction where you submitted a legal memo to the Department or the White House, the dates the memos were provided, and whom they were submitted to.

RESPONSE: (b) (5)

5. I wrote to you about the June 2018 Mueller memo in December, but I'd like you to clarify your answers for the record.
 - a. You testified no one asked you to write the memo. Why did you decide to do so?
 - b. At the time you submitted this memo to officials at the Justice Department and President Trump's attorneys, had you talked to anyone about a possible Attorney General nomination? If so, with whom, when, and what was discussed?
 - c. Did you consult anyone during the process of drafting this memo? If so, whom?
 - d. Did you discuss this memorandum or its contents with Mr. Rosenstein, Mr. Engel, or anyone at the Department of Justice before or after you submitted it? If so, with whom, when, and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?
 - e. Did you discuss this memorandum or its contents with anyone else? If so, with whom and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?

RESPONSE: (b) (5)

6. During your hearing, you reserved the right not to follow advice from career Department ethics officials.
 - a. If you are confirmed, will you commit to providing to the Committee any advice career Department ethics officials give you about recusal related to this memo or any other matter related to the Special Counsel's investigation?

- b. If you disregard or disagree with advice from career ethics officials, will you also commit to providing an explanation of the basis for your disagreement and how you plan to address any concerns raised?

RESPONSE: (b) (5)

- 7. What steps will you take if you are confronted with a legal question or matter where the outcome might implicate the President's business or other financial interests?

RESPONSE: (b) (5)

- 8. Longstanding Justice Department policies limit communications between the Justice Department and the White House about pending or contemplated investigations to a select few officials. (Memorandum from the Attorney General for Heads of Department Components, All United States Attorneys re: Communications with the White House and Congress (May 11, 2009)) This policy helps insulate Justice Department decisionmaking from political influence and protects potentially sensitive law enforcement information. At his nomination hearing, Deputy Attorney General Rosenstein confirmed that this policy was still in place and committed to enforcing it. (S. Hrg. *Confirmation Hearing on the Nomination of Rod Rosenstein to be Deputy Attorney General* (Mar. 7, 2017))

When you were asked at your hearing what the current Justice Department communications policy is, you said, "Well, it depends -- it depends what it is, but on criminal matters I would just have the AG and the deputy."

- a. Are you familiar with the longstanding Justice Department policy memorialized in a May 2009 letter from Attorney General Holder? If you are confirmed, do you commit to enforcing this policy and ensuring that both the Justice Department and the White House know the rules?
- b. You also stated in the hearing, you thought you would strengthen the policy. What did you mean by that?

RESPONSE: (b) (5)

- 9. The Justice Department and FBI consistently decline to comment publicly or to Congress about open investigations. The Inspector General calls this the "stay silent" rule and says that rule, among other things, protects "the integrity of an ongoing investigation" and "the Department's ability to effectively administer justice without political or other undue outside influences." (Department of Justice, Office of the Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018) at p. 371) For similar reasons, nearly two decades ago, the Justice Department informed Congress in a letter to Rep. John Linder that "[t]he Department's longstanding policy is to decline to provide Congressional

committees with access to open law enforcement files.” (Linder Letter, 1/27/00)

- a. Are you familiar with this longstanding Justice Department policy against public disclosure of information about open investigations?
- b. If you are confirmed, do you commit to enforcing this policy against public disclosure of information about open investigations?
- c. Is the disclosure of information about a confidential source consistent with this policy?
- d. Is providing FISA applications relevant to an ongoing investigation consistent with this policy?

RESPONSE: (b) (5)

10. You have repeatedly endorsed an expansive view of presidential power, referred to as the “unitary executive theory.” (William P. Barr, Assistant Attorney General, Office of Legal Counsel, *Common Legislative Encroachments On Executive Branch Authority*, (July 27, 1989)) Under this theory, the President would have virtually limitless control over the Executive Branch, and very few, if any, checks on his constitutional authorities.

At your hearing, you promised to allow Special Counsel Mueller’s investigation to continue unimpeded if you are confirmed as Attorney General and committed to complying with the Justice Department’s Special Counsel regulations. Under the unitary executive theory, would the President have the power to direct the Attorney General's to rewrite the regulations?

RESPONSE: (b) (5)

11. The Supreme Court rejected the unitary executive theory in *Morrison v. Olson*, 487 U.S. 654 (1988).

- a. Do you believe *Morrison v. Olson* was correctly decided?
- b. In your view, are laws requiring the President to have “good cause” before removing heads of independent agencies constitutional?
- c. During your hearing you said, “the President can fire a U.S. Attorney. They are a presidential appointment.” Was it acceptable for the President to dismiss seven U.S. Attorneys for prosecuting Republican elected officials or not prosecuting Democratic elected officials in 2006?

RESPONSE: (b) (5)

12. You have said that, as Attorney General, you advised President George H.W. Bush that you “favored the broadest” pardon for Caspar Weinberger and several other individuals implicated in the Iran-Contra Affair. (Miller Center Interview, 4/5/01) Then-Independent Counsel Lawrence Walsh said the decision to issue these pardons “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office—deliberately abusing the public trust without consequence.” (David Johnston, *Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-Up'*, N.Y. TIMES (Dec. 25, 1992))

- a. Do you believe the President’s pardon authority is subject to any limits? What would constitute an abuse of presidential pardon authority?
- b. Could a President under criminal investigation pardon his co-conspirators?
- c. Could a President offer a pardon in exchange for a witness’s agreement not to cooperate with investigators?
- d. Could the President grant pardons in exchange for bribes?

RESPONSE: (b) (5)

13. In your view, what are the options for holding a president accountable for abuse of the pardon authority? During your hearing, you were asked if the President has authority to use money appropriated to the Defense Department to build a wall on the border. You responded, “without looking at the statute, I really could not answer that.”

- a. Now that you have had the opportunity to review any relevant statutes, please state whether you believe the President can use money currently appropriated to the Defense Department to build a border wall.
- b. Putting aside the statute, do you believe the President has inherent authority under the Constitution to use appropriated funds regardless of what Congress dedicated the funds for?

RESPONSE: (b) (5)

14. In 2005, the George W. Bush Administration issued a signing statement reserving the President’s right to decline to enforce the Detainee Treatment Act’s ban on torture. The statement argued the ban could infringe on the President’s Commander in Chief authority. (Bush Signing Statement (Dec. 30, 2005))

- a. Do you agree with this signing statement?
- b. Do you believe it was lawful?

RESPONSE: (b) (5)

15. Have you reviewed the Executive Summary of the Senate Select Committee on Intelligence's Study into the CIA's Detention and Interrogation Program? If confirmed, will you commit to reviewing the full, classified study before you work on any matter regarding detainee treatment or interpretation of the Convention Against Torture or Geneva Conventions?

RESPONSE: (b) (5)

16. During your hearing, you told Senator Grassley that, if confirmed, you will ensure that the Justice Department will respond in a timely manner to requests from both Committee Chairs and Members of Congress.

- a. Will you specifically commit to timely responding to minority requests—not just requests from a Chair or members of the majority?
- b. When Congress requests information from the Executive Branch, how and in what circumstances is executive privilege properly invoked? What standards and process will you use to evaluate the legitimacy of presidential executive privilege claims?

RESPONSE: (b) (5)

17. On January 16, 2019, the U.S. General Services Administration (GSA) Office of Inspector General released a report regarding the Old Post Office Building that GSA leases to President Trump and a corporation he wholly owns. The report concluded that GSA attorneys acted improperly when they "agreed [that the lease presented] a possible violation of the Foreign Emoluments Clause but decided not to address the issue." This conclusion was based, in part, on the GSA attorneys' "fail[ure] to seek OLC's guidance, even though [they] knew that OLC issued opinions on the Foreign and Presidential Emoluments Clauses." (GSA OIG Report at p. 16) During your hearing, you repeatedly discussed the importance of seeking the Office of Legal Counsel's guidance when faced with complex constitutional questions.

- a. The Justice Department has also been confronted with issues related to President Trump's financial holdings and the Emoluments Clauses. If confirmed, do you commit to seeking guidance from OLC on the applicability of the Emoluments Clauses to President Trump's personal financial interests?
- b. Do you commit to make public any OLC opinion on the applicability of the Emoluments Clauses to President Trump's personal financial interests to enable the public to understand OLC's reasoning and conclusions about the issue?

RESPONSE: (b) (5)

18. Please describe the selection process that led to your nomination to be Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: (b) (5)

19. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

RESPONSE: (b) (5)

20. Have you spoken with anyone about possible recusal from the Special Counsel's investigation? If so, with whom, when, and what was discussed?

RESPONSE: (b) (5)

21. Did President Trump or anyone else ever ask you to promise not to recuse from the Special Counsel's investigation?

RESPONSE: (b) (5)

22. You previously wrote: "The fact that terrorists' actions have been made criminal does not preclude the government from treating them as enemy combatants without any rights under our criminal justice system." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Do you still hold that view?

RESPONSE: (b) (5)

23. You previously wrote: "Thus, where the government sees an *individual* foreign person apparently acting as a terrorist, that should be a sufficient basis to conclude that the individual is not part of 'the people' and thus not protected by the Fourth Amendment." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Is it your position that non-citizens, even those located in the United States, are not protected by the Fourth Amendment of the Constitution? If so, what is the basis for that view?

RESPONSE: (b) (5)

24. Is the President authorized under Article II of the Constitution to conduct warrantless domestic security surveillance? Please explain your answer.

RESPONSE: (b) (5)

25. Does the President have authority under Article II of the Constitution to conduct bulk collection of Americans' telephone metadata? Please explain your answer.

RESPONSE: (b) (5)

26. You previously wrote: "Numerous statutes were passed, such as FISA, that purported to supplant Presidential discretion with Congressionally crafted schemes whereby judges become the arbiter of national security decisions." (*Testimony of William P. Barr before the House Select Committee on Intelligence* (Oct. 30, 2003))

- a. In your view, is the President required to follow laws enacted by Congress governing surveillance? If not, please explain the basis for this conclusion.
- b. Are there any aspects of existing surveillance law, including the Foreign Intelligence Surveillance Act (FISA), that you believe the President can disregard? Please identify specific legal provisions and the basis for your conclusion that these provisions do not apply to the President.
- c. Is the Foreign Intelligence Surveillance Act (FISA) the exclusive means for the President to conduct foreign intelligence electronic surveillance in the United States? Please explain your answer.

RESPONSE: (b) (5)

27. Previous Attorney General nominees, including your predecessor, agreed to seek and follow the advice of career ethics officials about questions of recusal that may arise during service in the Justice Department.

- a. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of the companies — private and public, including parent companies, subsidiaries, and related entities — for which you have served on the board of directors or advisors? These companies include Och-Ziff Capital Management Group, LLC; Dominion Energy, Inc.; Time Warner, Inc.; Holcim (US) Inc. and Aggregate Industries Management, Inc.; Selected Funds; and Dalkeith Corporation.
- b. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of your legal and consulting clients, including but not limited to Caterpillar and Credit Agricole?
- c. If you will not commit to following the advice of career ethics officials, will you

commit to providing to Congress the advice that they provided to you along with an explanation of why you are not following their advice?

RESPONSE: (b) (5)

28. According to the ethics agreement prepared by the Justice Department's Justice Management Division on January 11, 2019, you agree if confirmed to "not participate personally and substantially in any particular matter involving specific parties in which" the law firm Kirkland & Ellis "is a party or represents a party," unless you first receive authorization to participate. That prohibition applies for a period of one year after your resignation from Kirkland.

- a. If confirmed, will you commit to following this agreement even if it applies to investigations conducted by Special Counsel Mueller?
- b. If confirmed, will you commit to following this agreement even if it applies more broadly to investigations into potential interference in the 2016 Presidential election, including but not limited to investigations into collusion and/or obstruction of justice?

RESPONSE: (b) (5)

29. During your confirmation hearing to be Attorney General in 1991, you said that the right to privacy in the Constitution does not "extend[] to abortion" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-505, Pt. 2, *Confirmation Hearing on the Nomination of William P. Barr to be Attorney General* (Nov. 12, 1991) at p. 63) In a June 1992 hearing before the Senate Judiciary Committee, you echoed these comments and said the Supreme Court's 1992 decision in *Planned Parenthood v. Casey* "didn't go far enough" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-1121, *Proposed Authorizations for Fiscal Year 1993 for the Department of Justice* (June 30, 1992) at p. 47) At the time you made these remarks *Roe v. Wade* had been established precedent for 18 years. *Roe v. Wade* is now more than 40 years old and has survived more than three dozen attempts to overturn it.

- a. Is *Roe v. Wade* settled law? Do you still believe that *Roe v. Wade* should be overruled?
- b. Do you believe that the Due Process Clause of the Fourteenth Amendment includes a right to privacy?

RESPONSE: (b) (5)

30. As Attorney General, you argued that it was proper for the Justice Department to urge the Supreme Court to overturn established precedent. You said that "urging the Court to reconsider a prior decision serves the executive branch's obligation to the Constitution, without diminishing the Court's constitutional role." (15 CARDOZO L. REV. 31 (1993)).

When is it proper for the Justice Department to urge the Court to overturn precedent? What factors should the Department take into account before urging the Court to overturn precedent?

RESPONSE: (b) (5)

31. During an appearance on CNN in July 1992, while you were Attorney General, you said “I think this [Justice] Department will continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation.” (Evans and Novak, CNN Television Broadcast (July 4, 1992))

- a. Will you commit to ensuring that the Department of Justice does not call for reconsideration and overturning of *Roe v. Wade*, if you are confirmed as Attorney General?
- b. Will you commit to ensuring that the Department does not seek ways, short of overturning *Roe*, to limit reproductive rights?

RESPONSE: (b) (5)

32. At your confirmation hearing, Senator Blumenthal asked whether you would defend *Roe v. Wade* if it were challenged. You responded that “usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that.” (S. Hrg, *Confirmation Hearing on the Nomination of William Barr to Be Attorney General* (Jan. 15, 2019) Tr. at 145)

- a. If confirmed, will you ensure that the Justice Department defends *Roe v. Wade* in court?
- b. Will you ensure that the Department does not argue that state restrictions do not constitute a “substantial burden” on a woman’s right to abortion?

RESPONSE: (b) (5)

33. At any point before or after your nomination to be Attorney General, has anyone from the Trump Administration discussed with you your views on *Roe v. Wade*? If so, please describe these discussions, including when they took place, who was involved, and what was discussed.

RESPONSE: (b) (5)

34. In the summer of 1991, while you were Deputy Attorney General, the anti-choice group Operation Rescue organized a six-week long protest of three abortion clinics in Wichita, Kansas. The protests resulted in 2,600 arrests. Judge Patrick Kelly, a federal district court

judge in Kansas, entered a preliminary injunction barring Operation Rescue and its protestors from blocking access to abortion clinics and physically harassing staff and patients. The Justice Department intervened in the litigation on behalf of Operation Rescue and sought to stay Judge Kelly's preliminary injunction order.

According to news reports, the Justice Department argued that the abortion clinics had not demonstrated that they would prevail in their lawsuit and that the specific requirements of the order intruded on the Marshals Service's discretion to enforce court orders. Although Judge Kelly granted the Justice Department's request to intervene in the lawsuit, he reportedly said he was "disgusted by this move" and he characterized the Justice Department's involvement as political. (*U.S. Backs Wichita Abortion Protestors*, ASSOCIATED PRESS (Aug. 7, 1991)).

During this time, the Justice Department was involved in a similar case in Virginia – *Bray v. Alexandria Women's Health*. This case concerned a lawsuit by several abortion clinics to prevent protestors from conducting demonstrations at clinics. The Justice Department again intervened on behalf of the protestors.

Please describe the nature and extent of your involvement in cases involving abortion clinic protests – including the Kansas and Virginia cases mentioned above – during your tenure as Deputy Attorney General and Attorney General under President George H.W. Bush.

RESPONSE: (b) (5)

35. There has been significant reporting about young migrants being forced to appear in immigration court hearings without adequate representation. For example, there have been reports of toddlers sipping milk bottles as they defend themselves in immigration court without their parents or guardians. (Sasha Ingber, *1-Year-Old Shows Up in Immigration Court*, NPR (July 8, 2018)) Courts have consistently held that anyone on United States soil is protected by the Constitution's right to due process. (*See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to [the] constitutional protection" in the Fifth and Fourteenth Amendments))
- a. Are toddlers receiving due process when they appear alone in immigration court?
 - b. If confirmed, what specific steps will you take to ensure that minors are adequately represented in immigration court proceedings?

RESPONSE: (b) (5)

36. At your hearing, Senator Durbin discussed the zero-tolerance policy implemented by then-Attorney General Sessions that led to the separation of over 2,000 children from their parents at the Southern border. Specifically, he asked you whether you agree with the zero-tolerance policy decision. You acknowledged that the Administration walked

back its family separation policy in a June 2018 executive order, but you did not directly answer Senator Durbin's question.

- a. Do you agree with the Zero Tolerance policy?
- b. Do you agree with separating children from their parents when they arrive in the United States? If yes, why? If not, why not?
- c. If confirmed, will you commit that the Justice Department will not continue, reinstate, and/or defend policies that lead to family separations?

RESPONSE: (b) (5)

37. If confirmed, will you enact policies that restrict asylum law or lead to prolonged or indefinite detention of children and families? Such policies include changing the definition of "particular social group" to exclude families or forcing parents to choose between being detained with their children and being separated but allowing their children to apply for asylum.

RESPONSE: (b) (5)

38. President Trump has determined that asylum seekers who have already filed asylum claims within the United States will be forced to wait in Mexico while their claims are adjudicated. In Mexico, many of these asylum seekers, including small children, have no fixed address, but instead camp out in stadiums or on the street.

An asylum seeker who demonstrates a credible fear of persecution must receive an opportunity to make his or her case before an immigration judge. This means the asylum applicant will need to receive documents from the Justice Department, including hearing notices, in Mexico, where they have no fixed address and where legal requirements for service of documents differ from the requirements for service in the United States.

How will the Justice Department ensure that asylum seekers with no fixed address in Mexico receive notice of the time and place of the hearings before the immigration judge, and receive documents regarding their case, including notices of changes in the Immigration Court calendar?

RESPONSE: (b) (5)

39. At your hearing, Senator Hirono asked whether you believe the 14th Amendment to the U.S. Constitution guarantees birthright citizenship. You responded that you "have not looked at that issue." The Citizenship Clause of the 14th Amendment states that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

- a. Do you agree that the 14th Amendment to the U.S. Constitution guarantees birthright citizenship? If not, on what basis did you reach that conclusion?
- b. Do you agree that a child born in the United States to undocumented parents is a citizen of the United States? If not, on what basis did you reach that conclusion?

RESPONSE: (b) (5)

40. Last October, President Trump announced plans to prepare an executive order ending birthright citizenship. Do you believe the President has the authority to nullify birthright citizenship by executive order?

RESPONSE: (b) (5)

41. A longstanding principle of U.S. asylum law is that a group of family members constitutes the “‘prototypical example’ of a particular social group” *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985). Nonetheless, the Acting Attorney General referred an immigration case to himself and asked the parties to brief “whether, and under what circumstances, an alien may establish persecution on account of membership in a particular social group under 8 U.S.C. 1101(a)(42)(A) based on the alien’s membership in a family unit.” (*Matter of L-E-A-*, 27 I&N Dec. 494 (A.G. 2018)) If confirmed, will you review the grounds for certifying this question to the Attorney General and, if you agree with the decision to do so, explain the basis for that decision to this Committee?

RESPONSE: (b) (5)

42. Under federal law, fugitives cannot legally purchase or possess guns. I am deeply troubled that the Justice Department has now issued guidance that forced the FBI National Instant Criminal Background Check System database — also called NICS — to drop more than 500,000 names of fugitives with outstanding arrest warrants. I know that local law enforcement shares these concerns. Apparently, the FBI was forced to drop these names because the Justice Department has further narrowed the definition of “fugitive” to include only those who cross state lines to avoid prosecution.

- a. If confirmed, will you commit to reviewing the Justice Department’s decision about who qualifies as a “fugitive”?
- b. Do you think this decision put public safety at risk? Why or why not?

RESPONSE: (b) (5)

43. Following the murders of nine churchgoers at Emanuel AME church in South Carolina in 2015, the FBI admitted it did not properly obtain information regarding the gunman’s

drug arrest record, which should have prohibited him from buying a handgun. Because the FBI had not received the correct information within 3 days, the dealer was legally permitted to complete the sale to the gunman. As a result, 9 were killed.

Would you support extending or eliminating the three-day requirement that allows a gun dealer to transfer a gun without a completed background check? If not, please explain why you would not support this change.

RESPONSE: (b) (5)

44. I am increasingly concerned about legislation that would imperil police officers in California and nationwide, specifically a proposal to force every state to recognize concealed-carry permits issued by other states, even those states that have less stringent standards for issuing concealed carry permits. Major national law enforcement organizations, such as the International Association of Chiefs of Police and the Major Cities Chiefs Association, have recognized how dangerous such a proposal would be for officers nationwide.

- a. Do you believe the Second Amendment requires California to recognize a concealed-carry permit from Alabama or Texas? Do you believe that this is required by any other constitutional provision? Please provide a yes or no answer and explain your reasoning.
- b. What is your position on legislation that requires one state to recognize concealed-carry permits issued by other states? Please explain the basis for your views.

RESPONSE: (b) (5)

45. The Administration recently issued a regulation to ban bump stocks, which essentially transform semi-automatic rifles into machineguns. In 2017, bump stocks enabled the shooter in Las Vegas to carry out the most catastrophic mass shooting in American history. That regulation, however, has now been challenged in court, and it may not be upheld. A law, however, would not be vulnerable to the same sort of challenge. If confirmed, do you commit to support legislation to ban bump stocks?

RESPONSE: (b) (5)

46. Many domestic violence abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are still able to stockpile an arsenal of firearms and ammunition. That is despite being prohibited from possessing firearms or ammunition under federal firearms law. Local domestic violence programs often attempt to help victims by seeking enforcement of federal law and removal of the firearms, but they are unable to get assistance from the Department of Justice and other federal agencies. Similarly, local law enforcement is often overwhelmed by the sheer

number of firearms in the possession of domestic violence offenders.

If you are confirmed, how will the Department of Justice improve its response to cases like these, which are likely to lead to homicides, and what kind of resources will you devote to make sure that guns are not as accessible to domestic abusers?

RESPONSE: (b) (5)

47. We are at an important moment in our nation with regarding to addressing sexual assault and the MeToo movement. If confirmed as Attorney General, what will the Department of Justice's role and priorities be with regards to addressing sexual assault through the Office on Violence Against Women and the Office for Victims of Crime?

RESPONSE: (b) (5)

48. If confirmed as Attorney General, will you commit to working with Congress to reauthorize the Violence Against Women Act, including improvements to support the national response to domestic violence, dating violence, sexual assault, and stalking?

RESPONSE: (b) (5)

49. As Attorney General, you will be responsible for enforcing the landmark Voting Rights Act, which has proven instrumental to expanding the right to vote for all Americans, and minorities in particular. But with its 2013 decision in *Shelby County v. Holder*, the Supreme Court gutted the law by severely limiting the ability of the Justice Department to block discriminatory voting laws from taking effect in states with a history of limiting minority voting rights. This majority based its decision on its conclusion that "the conditions that originally justified these measures no longer characterize voting" in states with a history of discriminatory voting practices.

- a. Do you agree that "the conditions that originally justified [the application of preclearance provisions in the Voting Rights Act to certain states] no longer characterize voting" in states with a history of discriminatory voting practices?
- b. If confirmed, would you support legislation to restore the preclearance provisions struck down by the Court in *Shelby County*?

RESPONSE: (b) (5)

50. On October 20, just weeks before the 2018 election, President Trump tweeted: "All levels of government and Law Enforcement are watching carefully for VOTER FRAUD,

including during EARLY VOTING.” (President Donald Trump, (@realDonaldTrump), Twitter (Oct. 20, 2018, 8:36 AM)) And the day before the election, President Trump said: “All you have to do is go around, take a look at what’s happened over the years, and you’ll see. There are a lot of people — a lot of people — my opinion, and based on proof — that try and get in illegally and actually vote illegally.” (Amy Gardner, *Without evidence, Trump and Sessions warn of voter fraud in Tuesday’s elections*, WASHINGTON POST, (Nov. 5, 2018))

Are you aware of any evidence that “a lot of people” vote illegally? If not, are you concerned about statements like this undermining the public’s faith in election results?

RESPONSE: (b) (5)

51. Remarkably, in Texas, a voter can show a handgun license to vote, but not a student ID. And in Georgia, the name on a voter registration form must be identical to the applicant’s name as it appears on his or her ID. Any minor discrepancy or clerical error — for example, a hyphen on the voting application that does not appear on the ID — could be grounds for blocking voters from registering or for kicking voters off of the voting rolls. (Janell Ross, *It’s Time for a New Voting Rights Act*, THE NEW REPUBLIC (Nov. 13, 2018))

- a. What is the basis to allow someone to vote if they show a handgun license, but not a student ID?
- b. Is a minor discrepancy between a voter registration form and a photo ID — for instance, a hyphen in the name on a voting application that does not appear on the voter’s ID — a valid reason to purge a registered voter from the voting rolls?

RESPONSE: (b) (5)

52. Under longstanding policy, the Justice Department will defend the constitutionality of any statute so long as a reasonable argument can be made in its defense. Attorney General Sessions concluded that no reasonable argument could be made in defense of the ACA and, specifically, the ACA’s guaranteed-issue provision. During your confirmation hearing, you told Senator Harris that if you are confirmed, you “would like to review the Department’s position” in *Texas v. United States*, which challenges the ACA’s constitutionality. You also said that you were open to reconsidering the Department’s position in the case. (S. Hrg, Confirmation Hearing on the Nomination of William Barr to Be Attorney General (Jan. 15, 2019) Tr. at 301)

- a. Will you commit, if confirmed, to notifying Congress when you start and when you complete your review of the Department’s position in *Texas v. United States*? Will you commit to notifying Congress what the basis is for your decision?

- b. If confirmed, do you commit to consulting with career Justice Department attorneys before making any final decision as to the Department's position in the case?

RESPONSE: (b) (5)

53. The Justice Department announced in October 2018 that it planned to close the San Francisco field office of the Environment and Natural Resources Division. This office has focused on enforcing environmental laws and protecting public resources on the West Coast, particularly in California. I am deeply concerned that the closure of this office will allow polluters in California to avoid complying with our environmental laws.

If confirmed, will you commit to seeing if an alternative location can be identified to keep the office in Northern California?

RESPONSE: (b) (5)

54. You served in the Department of Justice at the time the Americans with Disabilities Act (ADA) was signed into law by President George H.W. Bush, on July 26, 1990. As you know, the ADA received broad, bipartisan support, passing the Senate by a vote of 91-6 and the House of Representatives by a vote of 377-28. When he signed the ADA, President Bush said the following: "Today we're here to rejoice in and celebrate another 'independence day,' one that is long overdue. With today's signing . . . every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom." (*Remarks of President George Bush at the Signing of the Americans with Disabilities Act*, (July 26, 1990)) But, of course, that equality, independence, and freedom depend on vigorous enforcement of the ADA. If confirmed, what specific steps will you take to ensure that the ADA is vigorously enforced?

RESPONSE: (b) (5)

55. I have long been a proponent of funding for anti-methamphetamine programs. I established the COPS Anti-Methamphetamine grants program in 2014 and later supported its authorization in the Substance Abuse Prevention Act. In 2018, 9 states were awarded COPS Anti-Methamphetamine grants, totaling more than \$7 million. These funds go to state law enforcement agencies and enable them to participate in meth-related investigative activities.

In fiscal year 2018, the Justice Department's budget proposed eliminating funding for this program. Given the increase in methamphetamine related deaths, if you are confirmed as Attorney General, will you commit to prioritizing and requesting funds for this program?

RESPONSE: (b) (5)

56. It is well established that former Attorney General Sessions opposes the legalization of marijuana, regardless of whether it is for medical or recreational purposes. In January of last year, he issued a memorandum to U.S. Attorneys, titled “Marijuana Enforcement.” In this memo, the former Attorney General rescinded what is known as the “Cole Memorandum,” which allowed states to implement their own marijuana laws without fear of federal interference, provided that they were in compliance with eight priority enforcement efforts.

In rescinding this memo, the Attorney General maintained that opioids and fentanyl, not marijuana, were the Department’s primary focus. I agree that other drugs of abuse should be prioritized over marijuana, and do not want to see Californians arrested if they are acting in compliance with State law.

You discussed this issue with Senator Booker at your confirmation hearing, when you said the following: “I am not going to go after companies that have relied on the Cole Memorand[um]. However, we either should have a Federal law that prohibits marijuana everywhere – which I would support myself because I think it is a mistake to back off on marijuana. However, if we want a Federal approach, if we want States to have their own laws, then let us get there and let us get there the right way.” (Hearing Tr. at 171) To clarify your position, please answer the following questions:

What is your position on the legalization of marijuana, whether for medical or recreational purposes?

RESPONSE: (b) (5)

57. In August 2016, the Department of Justice posted a notice in the Federal Register to solicit applications for the bulk manufacture of marijuana, intended to supply legitimate researchers in the United States. I understand that 26 applications, including 3 from California, were submitted in response. It has now been almost 3 years, and the Department has failed to take action on any of these applications. This delay could hinder important research that may lead to the development of FDA-approved drugs. (*Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States*, Federal Register (Aug. 12, 2016))

I asked former Attorney General Sessions about this delay on multiple occasions - both in questions for the record and through staff contact – and still have yet to receive a

response as to when a final decision will be made on these pending applications.

If you are confirmed, will you commit to taking immediate action on these applications?

RESPONSE: (b) (5)

58. Studies by the National Institute of Justice have found that drug courts are more effective in reducing rates of recidivism among offenders and cost less per participant as compared to the traditional criminal justice system. (*Do Drug Courts Work? Findings from Drug Court Research*, National Institute of Justice)

Do you support drug court programs, and if confirmed, will you prioritize funding for these programs?

RESPONSE: (b) (5)

59. On March 26, 2018, Commerce Secretary Wilbur Ross issued a memorandum directing the Census Bureau to add a question on citizenship status on the 2020 Census. Secretary Ross said that this question was requested by the Justice Department, which argued that the information is needed to enforce the Voting Rights Act (VRA). (Memorandum from Secretary Ross to Karen Dunn Kelley (Mar. 26, 2018))

The Census Bureau's decision is currently being challenged in *New York Immigration Coalition v. United States Department of Commerce*. As part of that case, John Gore, the then-Acting Assistant Attorney General for the Civil Rights Division, was recently deposed. In his deposition, Mr. Gore was asked the following: "You agree, right, Mr. Gore, that [citizenship] data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts?" Mr. Gore responded: "I do agree with that. Yes." (Gore Dep. Tr. at 300, *New York Immigration Coalition v. United States Dept. of Commerce*)

- a. Do you support the inclusion of a question on citizenship in the Census? If so, why?
- b. Do you agree with Mr. Gore that citizenship "data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts"? If not, on what basis do you disagree with his assessment?

RESPONSE: (b) (5)

60. According to Mr. Gore, after the Census Bureau received the Justice Department's request to add a citizenship question, the Census Bureau suggested that there might be a

method *other* than a citizenship question to get citizen voting age population data — also known as CVAP data — to the Justice Department for purposes of VRA enforcement. (Gore Dep. Tr. at 264-265) The Census Bureau’s plan, as detailed by the Census Bureau’s acting director, Dr. Ron Jarmin, in an email to Justice Department officials, was to “utilize[e] a linked file of administrative and survey data the Census Bureau already possesses,” rather than to add a citizenship question. According to Dr. Jarmin, this approach “would result in higher quality data produced at lower cost.” (Email from Ron S. Jarmin to Arthur Gary re: Request to Reinstate Citizenship Question on 2020 Census Questionnaire (Dec. 22, 2017)) The Justice Department rejected Dr. Jarmin’s offer to meet. According to Mr. Gore, Attorney General Sessions personally directed Mr. Gore to deny the meeting request. (Gore Dep. Tr. at 274 (“Q. And who informed you that the Department of Justice should not meet with the Census Bureau to discuss the Census Bureau’s alternative proposal for producing block-level CVAP data? A. The Attorney General.”))

- a. Should the Justice Department have the best available data for purposes of enforcing the Voting Rights Act? If not, why not?
- b. If confirmed, do you commit to allowing the Justice Department to meet with the Census Bureau to discuss the Bureau’s views as to how to provide the best citizenship data?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR LEAHY

1. When I asked you whether you would commit to seeking and following the guidance of Justice Department ethics officials on whether to recuse yourself from Russia investigation, you stated that you would “seek” their advice but that you “make the decision as the head of the agency as to my own recusal.” Thus you’ve fallen short of former Attorney General Sessions’ commitment to seek and follow the Department’s ethics officials with respect to his recusal from the Russia investigation – which he did. And your testimony falls even shorter than that of former Attorney General Richardson’s far stronger commitments, which he made because he believed it was “necessary to create the maximum possible degree of public confidence in the integrity of the process.”
 - a. Whether or not as a technical matter you, as Attorney General, would have the authority to decide whether to recuse yourself, do you agree that following the advice of career ethics officials on the question would help create the “maximum possible degree of public confidence” in the “integrity of the process,” especially given your high profile opinions and writings about Special Counsel Mueller’s investigation?

RESPONSE: (b) (5)

- b. If you will not agree to seeking and following the guidance of Justice Department ethics officials regarding whether you should recuse yourself from the Russia investigation, will you commit to providing the House and Senate Judiciary Committees with detailed, contemporaneous documentation showing: (1) the analysis and conclusion of the Department’s ethics officials on the question; (2) your own analysis and conclusion on the question; and (3) if you arrive at a different conclusion from the Department’s ethics officials, a written explanation of why your conclusion is better supported by the law and the facts?

RESPONSE: (b) (5)

2. I asked during your confirmation hearing about your view, as reported in the New York Times in November 2017, that you saw more basis for a federal investigation of the Uranium One deal than an investigation into potential collusion with Russia. You stated to the New York Times at the time that by not pursuing the Uranium One deal, along with investigating the Clinton Foundation, the Justice Department was “abdicated its responsibility.” In response on Tuesday, you disputed the New York Times’

characterization of your assertion regarding Uranium One. You testified that the Uranium One assertion was not in quotes and you were actually making a broader point about the need for the Department to launch investigations in an even-handed, consistent way. You referenced John Huber, the United States Attorney for Utah, who was later appointed, in the spring of 2018, by then-Attorney General Sessions to investigate multiple matters of political interest to Republicans. After this exchange, the New York Times took the unusual step of releasing your email revealing your full comment, which included, in relevant part, “I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] Foundation, is far stronger than any basis for investigating so-called ‘collusion.’”

- a. On what basis did you claim in November 2017 that the Uranium One deal was deserving of a federal investigation?

RESPONSE: (b) (5)

- b. Do you still believe that the Justice Department is “abdicating its responsibility” to the extent that it is not pursuing the Uranium One matter?

RESPONSE: (b) (5)

- c. Do you still believe that the predicate for investigating Uranium One is “far stronger” than for investigating collusion between Russia and the Trump campaign?

RESPONSE: (b) (5)

- d. If a president calls for a politically motivated criminal investigation, what is the proper role for the Attorney General? Do you believe an Attorney General must conduct a preliminary review to determine if further investigation is warranted? If so, what could this review entail?

RESPONSE: (b) (5)

3. During any conversation with President Trump, including the one in summer 2017 regarding legal representation and recently regarding your nomination, did you discuss the Russia investigation? If yes, what was said?

RESPONSE: (b) (5)

4. I am very concerned with press freedom around the world, and especially the increasing attacks on journalists in the United States. During your hearing, Senator Klobuchar

asked you if the Department of Justice would jail reporters for doing their jobs, and you stated that you could think of a situation where a journalist “could be held in contempt.”

- a. Can you give specific examples of situations in which you would consider attempting to jail a journalist?

RESPONSE: (b) (5)

- b. President Trump regularly expresses his displeasure with many news organizations and reporters by name. How would you ensure that any actions the Department takes are not driven by the President’s politically motivated animosity, or are not tainted by the appearance of a political motivation?

RESPONSE: (b) (5)

5. When President Trump fired former Acting Attorney General Sally Yates for refusing to defend his Muslim Ban, you wrote an op-ed defending his decision and criticizing Yates. You argued that when the “president determines an action is within his authority — even if that conclusion is debatable” — the Attorney General’s responsibility is to “advocate the president’s position in court.”

- a. Is that how you still see the role of the Attorney General — to execute a president’s policy and defend his actions even when his authority is highly questionable or appears to be flawed?

RESPONSE: (b) (5)

- b. If an Attorney General cannot support a president’s policy, do you believe the only option available to him or her is to resign?

RESPONSE: (b) (5)

6. In the 1990s you often attributed the nationwide spike in crime to a “breakdown of traditional morality” and the “promotion of secularism.” This is how you described it on Larry King Live in 1992: “We have the highest crime rate in the world, and that’s unfortunate. And I think that has to do with a lot of aspects about our society—our heterogeneity, and so forth.” Can you explain what you meant by this comment? Did you believe that our nation’s diversity led to increased crime?

RESPONSE: (b) (5)

7. You've long been a proponent of mass incarceration, arguing in 1994 that "increasing prison capacity is the single most effective strategy for controlling crime." You also testified during your hearing that your views were shaped by the nation confronting a rise in crime during the early 1990s.

- a. Do you still believe that increasing prison capacity is the most effective strategy for controlling crime?

RESPONSE: (b) (5)

- b. In recent years, in dozens of states across the country, prison rates and crime rates have fallen together. How do you explain that?

RESPONSE: (b) (5)

8. During a 1995 panel you claimed that social programs fail to reduce crime and may even exacerbate it. In an article you published in the Michigan Law and Policy Review in 1996 titled "A Practical Solution to Crime in our Communities," you argued, in part, for the reduction of social programs that, in your view, increase rates of crime. Do you still agree with these ideas?

RESPONSE: (b) (5)

9. In 2001, you stated the illicit drug trade should be treated like a national security issue, and that for those involved in trafficking organizations, "there are only two end games: You either lock them up or you shoot them, one or the other." You also said "I believe you can use law enforcement to some extent, particularly in the U.S., but the best thing to do is not to extradite Pablo Escobar and bring him to the United States and try him. That's not the most effective way of destroying that organization." Of course, that is exactly what is happening in the Eastern District of New York right now, with the trial of Joaquin "El Chapo" Guzman. If the options are to either lock them up or shoot them, and you don't believe the U.S. government should be extraditing people like Escobar, what exactly were you proposing the U.S. government do?

RESPONSE: (b) (5)

10. During your previous confirmation hearing, you testified that you "wouldn't defend regulations . . . if [you] don't think the regulation is consistent with Congress's intent."

One of the core statutes governing asylum, 8 U.S.C. § 1158, states that any alien who arrives in the United States “whether or not at a designated port of arrival . . . may apply for asylum.” Despite this statute, President Trump recently issued a rule categorically denying asylum claims made outside of ports of entry. The Supreme Court has upheld a nationwide injunction temporarily halting this rule, but the Justice Department is appealing it. If confirmed, would you instruct the Justice Department to continue defending President Trump’s asylum rule even though it is facially inconsistent with congressional intent and the explicit wording of an unambiguous statute?

RESPONSE: (b) (5)

11. The Office of Legal Counsel, which you headed for a year under President George H.W. Bush, is a powerful gatekeeper responsible for determining the legality of the President’s proposed actions. If the President proposes an action—say, declaring a national emergency—based on a characterization of the facts that is demonstrably false, does the OLC have any responsibility to scrutinize those falsehoods as part of its review?

RESPONSE: (b) (5)

12. You have praised former Attorney General Jeff Sessions for “breaking the record for prosecution of illegal-entry cases” and increasing illegal re-entry prosecutions “by 38 percent.” While illegal immigration is no doubt a problem we must address, the Justice Department has finite resources. On November 14, 2018, I wrote a letter to acting Attorney General Matthew Whitaker inquiring whether resources for prosecutions of serious criminal offenses were being re-directed toward immigration prosecutions. Indeed, as immigration prosecutions were ramped up under former Attorney General Sessions, across the border prosecutions of other crimes steadily decreased — without any indication that the rate of these crimes actually subsided. Would you continue the Department’s recent aggressive focus of prosecutorial resources on low level immigration offenses even if the result is the Department is unable to prosecute other serious crimes it once handled?

RESPONSE: (b) (5)

13. I asked you during the hearing about whether your views of the third party doctrine have evolved given the Supreme Court’s recent decision in *Carpenter v. United States*; you testified you had not reviewed the decision. Please do so and respond to the following:

- a. Do you still believe that “no person has Fourth Amendment rights in . . . records left in the hands of third parties”?

RESPONSE: (b) (5)

- b. Do you believe that there comes a point at which collection of data about a person—e.g., metadata, geolocation information, etc.—becomes so pervasive that a warrant would be required, even if collection of one bit of the same data would not?

RESPONSE: (b) (5)

- 14. In 1987, the D.C. Circuit Court of Appeals held that Georgetown University’s refusal to grant equal rights on campus to two LGBTQ affinity groups constituted a violation of D.C.’s Human Rights Act, which prohibits sexual orientation discrimination by educational institutions. In an article published in The Catholic Lawyer in 1995, you wrote that these types of laws seek to “ratify” conduct that was previously considered immoral, and this consequently dissolves any form of moral consensus in society. Do you still believe that laws granting equal protection to LGBTQ individuals “dissolve any form of moral consensus in society”?

RESPONSE: (b) (5)

- 15. The Violence Against Women Act was enacted in 1994, a year after you left the Department of Justice. Senator Crapo and I worked together to reauthorize the act in 2013. Our 2013 reauthorization expanded protections for many of the most vulnerable among domestic violence and sexual assault survivors – students, immigrants, LGBT victims, and those on tribal lands.

- a. Will you commit to support the implementation of these life-saving protections contained in the 2013 reauthorization?

RESPONSE: (b) (5)

- b. During your prior tenure as Attorney General, how did you approach the Department’s responsibility for prosecuting crimes committed on Indian Reservations? How do you intend to ensure that the investigation and prosecution of crime on Native reservations is a priority going forward?

RESPONSE: (b) (5)

- c. Will you commit to visiting a tribal court implementing VAWA jurisdiction within your first year, should you be confirmed?

RESPONSE: (b) (5)

16. According to Article II, Section 4 of the U.S. Constitution, “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” In your view, what constitutes a high Crime or Misdemeanor?

RESPONSE: (b) (5)

17. President Trump has stated many times that voter fraud is rampant in this country and has claimed that millions of votes were illegally cast in favor of Hillary Clinton during the 2016 presidential election. Most recently, President Trump said that people go vote, get back in their cars, put on a disguise and go back in and vote again.

- a. Are you aware of any credible evidence to substantiate either of President Trump’s claims?

RESPONSE: (b) (5)

- b. Is it important that when a president makes assertions relevant to the integrity of our voting systems, as well as relevant to potential federal crimes under the purview of the Justice Department, that he or she have a factual basis for doing so?

RESPONSE: (b) (5)

18. When asked by Senator Feinstein about the Constitution’s prohibition on emoluments, you testified that you believed “there is a dispute as to what the emoluments clause relates to,” and that you “couldn’t even tell [Senator Feinstein] what it says.” In 2016, then-Chairman Grassley and Senator Tillis questioned then-Attorney General Lynch on whether the receipt of any payment “from a foreign government or an instrumentality of a foreign government” by a spouse of an executive branch officer violated the Constitution. Such questions are even more pressing when it is the constitutional officer himself receiving such payments. Given the interest from senators, I trust you have had an opportunity to review the Emoluments Clause since last week. The actual text states that “no person holding any office of profit or trust under [the United States] shall, without the consent of the Congress, accept of any present, emolument, office, or title . . . from any king, prince, or foreign state.”

- a. Since President Trump has not divested from his businesses, does the rent paid by the Industrial and Commercial Bank of China to the President-elect for space at Trump Tower in New York raise concerns vis-à-vis the Emoluments Clause? The Bank, which is owned by the Chinese government, is according to news reports the largest tenant in Trump Tower.

RESPONSE: (b) (5)

- b. Does money paid by various foreign governments for the use of event space or lodging at the President's hotel here in Washington raise concerns vis-à-vis the Emoluments Clause?

RESPONSE: (b) (5)

- c. There are currently several lawsuits regarding a potential violation of the Emoluments Clause, including one from the attorneys general of Maryland and the District of Columbia. While subpoenas were issued a month ago, but the Department of Justice is asking for an appeals court to block this lawsuit from continuing. If confirmed as Attorney General, would you continue to appeal the decision of the District Court and attempt to end the lawsuit?

RESPONSE: (b) (5)

19. The General Services Administration (GSA) leases the Old Post Office Building for the Trump International Hotel in Washington, D.C. Recently, the Inspector General for the GSA issued a report stating that the agency lawyers ignored the constitutional issues that arose when they reviewed the lease after President Trump won the election in November 2016. The Inspector General concluded that, "following the 2016 election, it was necessary for GSA to consider whether President-elect Trump's business interest in the OPO lease might cause a breach of the lease upon his becoming President. The evaluation found that GSA, through its Office of General Counsel (OGC) and its Public Buildings Service, recognized that the President's business interest in the lease raised issues under the Foreign Emoluments and Presidential Emoluments Clauses of the U.S. Constitution that might cause a breach, but decided not to address those issues." This seems to suggest that there is a continuing concern with respect to conflicts of interest, the STOCK Act, and the Emoluments Clause.

- a. What is the Justice Department's role in enforcing the Emoluments Clause?

RESPONSE: (b) (5)

- b. If there is an apparent violation, would the Department conduct any inquiry or investigation?

RESPONSE: (b) (5)

20. Article 36 of the Vienna Convention on Consular Relations (VCCR) requires parties to the treaty to promptly inform, upon arrest, nationals of signatory nations that they have the right to meet with consular officials. The United States is a party to the VCCR, but there are a number of well documented cases in which the U.S. is not in compliance with our Article 36 obligations, and that noncompliance has strained our relationships with a number of important allies including Great Britain and Mexico. To help ensure compliance with Article 36, the U.S. Supreme Court adopted an amendment to Rule 5 of the Federal Rules of Criminal Procedure mandating that a judge presiding at the defendant's initial appearance inform "a defendant who is not a United States citizen [that he or she] may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested."

- a. Do you believe full compliance with Article 26 of the VCCR is important?

RESPONSE: (b) (5)

- b. Will you commit to ensuring full compliance with respect to any and all undocumented immigrants who are arrested, including if the arrest was executed by the Department of Homeland Security's Immigration and Customs Enforcement, for "acts that constitute a chargeable criminal offense"?

RESPONSE: (b) (5)

21. In December 2008, the Unaccompanied Alien Child Protection Act was signed into law as part of the Trafficking Victims Protection Reauthorization Act. Among other things, members of Congress worked on the 2008 and 2013 reauthorization bills to ensure that children who arrive in the United States without a parent or guardian, are, to the greatest extent practicable, provided with counsel to represent them in legal proceedings. Not only is it common sense that putting a child alone before a judge is fundamentally unfair and will not result in a just, informed outcome, but legal representation serves as an effective tool to ensure compliance with immigration laws. Studies show that the rate of unaccompanied minors who show up for immigration court increases from 60.9 percent to 92.5 percent when represented by a lawyer.

- a. Will you commit, if confirmed, to work with the Secretaries of Health and Human Services and Homeland Security to provide as many unaccompanied children as possible with legal representation?

RESPONSE: (b) (5)

- b. Similarly, will you commit, if confirmed, to facilitating increased collaboration between the Department of Justice's Executive Office for Immigration Review, known as EOIR, and community-based organizations to provide legal representation for migrant children separated from their parents?

RESPONSE: (b) (5)

22. The Inspector General for the Department of Health and Human Services released a report stating that the family separation policy began in summer of 2017. Thousands of children may have been separated before a court order forced HHS to keep track of the children they were separating from their parents. HHS also says they face challenges identifying the children.

- a. Do you believe that "zero tolerance" and family separation served as a useful deterrent to migrant families fleeing Central America?

RESPONSE: (b) (5)

- b. Would you consider resurrecting such policies under any circumstances?

RESPONSE: (b) (5)

23. In April 2001 at the Miller Center, you discussed your decision to intern HIV positive refugees in a separate camp on Guantanamo, stating: "We were using Guantanamo Bay, and it seemed like every other week I would be called over to meet with Colin Powell, [Dick] Cheney, and Brent Scowcroft, and they, of course, were complaining Their position was, Guantanamo is a military base, and why were all these people here, the HIV people, all these other people? How long are you going to be on our property with this unseemly business? I'd say, 'Until it's over. But we're not bringing these people into the United States.' This is a very convenient base outside the United States, and it's serving a good function. They were always complaining. I would say, what do you people do at Guantanamo? Maybe this is the highest, best use of Guantanamo. Maybe Guantanamo should be turned over to the INS [Immigration and Naturalization Service] and used as a processing center. Maybe this is the best use for the United States as opposed to whatever you people do with it. We got a little bit feisty." Ultimately, all Haitian refugees were released from Guantanamo after a federal district court found many of their constitutional rights to have been repeatedly violated. It is reported that the Departments of Justice and Homeland Security are currently considering the extra-territorial processing of asylum seekers in Mexico. Many immigration law experts believe that these proposals, like the failed Guantanamo policy, cannot be lawfully executed. Will you commit to ensuring that those who seek asylum in the United States

or at our borders will have the opportunity to have their claims processed from within the United States, with all the rights provided by the Constitution and federal law accorded to them?

RESPONSE: (b) (5)

24. A federal district court judge found that the medical conditions facing HIV positive detainees in Camp Bulkeley - directly under your control - were deplorable and insufficient. In *HCC v. Sale*, Judge Johnson specifically noted that military doctors had made the INS, which was under your control at the time, aware of these problems, but that your agency failed to act: “The military's own doctors have made INS aware that Haitian detainees with T-cell counts of 200 or below or percentages of 13 or below should be medically evacuated to the United States because of a lack of facilities and specialists at Guantanamo. Despite this knowledge, Defendant INS has repeatedly failed to act on recommendations and deliberately ignored the medical advice of U.S. military doctors that all persons with T-cell count below 200 or percentages below 13 be transported to the United States for treatment. Such actions constitute deliberate indifference to the Haitians’ medical needs in violation of their due process rights.” *Haitian Centers Council Inc. v. Sale*, 823 F.Supp. 1028, 1044 (EDNY 1993). During this period, one of your spokespeople at the INS, Duane Austin stated publicly, “We have no policy allowing people with AIDS to come enter the United States for treatment. ... They’re just going to die anyway, aren’t they?” A federal district court judge found that the agency directly under your control acted with deliberate indifference to the medical needs of migrants in U.S. government care. Today, the Department of Justice oversees the adjudication of the cases of tens of thousands of migrants in facilities operated by ICE where medical care is again suspect. NGOs report that, consistently, at least half of deaths in ICE custody are attributable to medical negligence. Sexual abuse is reported to be rampant, and DHS’s own Inspector General has found that conditions in immigration detention “undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment.” What can the Department of Justice take to ensure that there is accountability for medical negligence and malfeasance committed by DHS and/or DOJ officials in the immigration detention setting?

RESPONSE: (b) (5)

25. During your hearing, you stated that you would uphold the law of marriage equality, but that there needs to be accommodations made for religious purposes. However, you stated that the Department of Justice would only have a role in banning anti-LGBTQ discrimination only if Congress passes a law.

- a. What actions would you take, if any, if a state or local official refuses to issue a marriage license to a same-sex couple?

RESPONSE: (b) (5)

- b. When is it appropriate, if ever, to disregard a Supreme Court opinion, such as the one that protected same-sex marriage under the Constitution?

RESPONSE: (b) (5)

26. In 2016, Congress reformed the Freedom of Information Act, which codified the “presumption of openness” that requires all administrations to operate with transparency as the default setting. If confirmed as Attorney General, how will you enforce the presumption of openness? Will you commit to fully enforcing the object and purpose of FOIA and to encourage transparency?

RESPONSE: (b) (5)

27. Several reports have come out that T-Mobile executives have repeatedly booked rooms at President Trump’s Washington, D.C. hotel. Many have suggested that the executives have booked this hotel in the interest of furthering the success of the merger between T-Mobile and Sprint, which is being reviewed by the Department of Justice.

- a. Can you guarantee that the decision of the Justice Department’s antitrust division merger, if made during your time as Attorney General, will be unaffected by any executives’ decision to spend money at the President’s hotel?

RESPONSE: (b) (5)

- b. What steps will you take to ensure reviews of proposed mergers are free of political considerations?

RESPONSE: (b) (5)

28. In 2005, you testified before Congress that constitutional protections do not apply to Guantanamo detainees because “[t]he determination that a particular foreign person seized on the battlefield is an enemy combatant has always been recognized as a matter committed to the sound judgment of the Commander in Chief and his military forces. There has never been a requirement that our military engage in evidentiary proceedings to establish that each individual captured is, in fact, an enemy combatant.” You also argued that even if constitutional protections did apply, the military’s “[Combatant Status Review Tribunal] procedures would plainly satisfy any conceivable due process standard that could be found to apply.” You recommended that Congress consider

legislation to "eliminate entirely the ability of enemy aliens at Guantanamo Bay to file habeas petitions." Congress ultimately did so in the Military Commissions Act of 2006, which the Supreme Court held to be an unconstitutional suspension of the Writ of Habeas Corpus in *Boumediene v. Bush*. In *Boumediene*, the Court also found the military review procedures to be constitutionally inadequate. Do you support the holdings in *Boumediene v. Bush* as settled law?

RESPONSE: (b) (5)

29. In 2005, you testified that the Geneva Conventions do not apply to captured individuals affiliated with al Qaeda or the Taliban. The Supreme Court in *Hamdan v. Rumsfeld* rejected this view and held that Common Article III of the Geneva Conventions apply to the conflict in question. Do you support the holdings in *Hamdan v. Rumsfeld* as settled law?

RESPONSE: (b) (5)

30. You stated in 2005 that there "does not appear to be any real argument that these [military commission] trials belong in civilian courts." Since 9/11, there have been 8 convictions in military commissions, half of which have been partially or fully overturned. By contrast, there have been over 600 individuals convicted of terrorism-related offenses in civilian courts in that same period. The military commission trials of the individuals suspected of committing the 9/11 and U.S.S. Cole terrorist attacks do not yet have start dates. Do you still believe that there is not "any real argument" for prosecuting these cases in Article III federal courts?

RESPONSE: (b) (5)

31. In recent years, there have been hundreds of cases in which individuals were exonerated based on faulty forensic evidence. This has long been an issue of bipartisan concern, and Senator Grassley and I have raised it on numerous occasions with officials from the Justice Department.
- a. Will you commit to working with Members of this Committee to ensure that law enforcement and criminal justice stakeholders have the strongest and most reliable forensic tools possible to ensure that crimes are solved, public safety is protected, and wrongful convictions are avoided?

RESPONSE: (b) (5)

- b. As you know, the FBI reviewed thousands of cases involving erroneous hair analysis testimony, resulting in the exoneration of innocent people and, in some cases, the identification of the true perpetrators of crimes. They then performed a Root Cause Analysis (RCA) to begin to understand what exactly led to the incredible amount of erroneous testimony. Will you work with the FBI and others to ensure that this RCA is completed promptly and that its results are made public for review, and to ensure this type of error is not repeated going forward in this or other forensic disciplines?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR DURBIN

1. In your June 8, 2018 memo, you acknowledge that there are many ways in which a President could commit obstruction of justice – for example by altering evidence, suborning perjury, or inducing a witness to change testimony. But your memo makes an assumption that Special Counsel Mueller’s obstruction theory relies on one particular obstruction of justice statute, 18 U.S.C. 1512—a statute you believe should not be used to investigate actions that you feel are within a President’s lawful authority.

Based on this assumption about Special Counsel Mueller’s obstruction theory, your memo concludes that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction.” In other words, you urge Special Counsel Mueller’s supervisor not to allow Mueller to take a certain action in an ongoing investigation and not to allow Mueller to ask the President any questions about obstruction, even though you concede that you are “in the dark about many facts” and that you are making assumptions about the legal obstruction theory.

- a. Is it appropriate for you to urge Special Counsel Mueller’s supervisor to block Mueller from taking an action in an ongoing criminal investigation when you do not know all the facts and were speculating about Mueller’s legal theory?
- b. Is it appropriate for you to flatly urge Special Counsel Mueller’s supervisor that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction” when there are numerous potential obstruction theories besides 18 U.S.C. 1512 that Special Counsel Mueller may want to question the President about?
- c. Is it still your view that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction”?
- d. In your January 14 letter to Chairman Graham, you said of your memo that “my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory.” You noted in your January 14 letter that you shared the memo with the several of the President’s defense attorneys. Did you also forward the memo to the Special Counsel’s Office so they could consider your views the potential implications of the theory? If not, why not?

- e. Did any of the President's attorneys whom you sent your memo tell you that they agreed with your view that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?
- f. Did any of the President's attorneys whom you sent your memo tell you that they used your memo to argue that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction"?

RESPONSE: (b) (5)

- 2. Because your June 8, 2018 memo expresses stark views about what you feel should and should not be permitted as part of the Special Counsel's ongoing criminal investigation, and because you sent your memo to Special Counsel Mueller's supervisor and to members of President Trump's defense team without informing the Special Counsel's Office of your memo, a reasonable person could conclude that you would not be impartial if issues arise as part of the Special Counsel investigation that require the Attorney General to make decisions regarding obstruction of justice, including decisions about what information about obstruction of justice should be included in reports to the Committee and the public. Therefore you should, at minimum, seek the advice of career Department ethics officials regarding recusing yourself from such decisions, pursuant to 5 CFR 2635.502(a)(2), given the legitimate questions that your memo and your use of it have raised about your impartiality.
 - a. Will you commit, if confirmed, to seek the advice of DOJ career ethics officials on this recusal question?

RESPONSE: (b) (5)

- b. If so, will you commit to promptly inform the Committee what advice the DOJ career ethics officials gave and whether you will follow it?

RESPONSE: (b) (5)

- 3. At your hearing you said that you would decline to follow the advice of career DOJ ethics officials "if I disagree with them." When you previously worked in the Justice Department, did you ever decline to follow the advice of career DOJ ethics officials? If so, please discuss when you did so and why.

RESPONSE: (b) (5)

- 4. At your hearing, Professor Neil Kinkopf said: "It is clear that Barr takes the DOJ regulations to mean that he should release not the Mueller report, but rather his own report. Second, he reads DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict—declination decisions. In combination with the DOJ view that a sitting president may not be indicted, this suggests that Barr will take the position that

any discussion or release of the Mueller report relating to the President, who, again, cannot be indicted, would be improper and prohibited by DOJ policy and regulations.”

- a. Do you take DOJ regulations to mean that you should release not the Mueller report, but rather your own report?

RESPONSE: (b) (5)

- b. Do you read DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict?

RESPONSE: (b) (5)

- c. Do you believe it would be improper and/or prohibited by DOJ policy or regulations to provide Congress or the public with any discussion or release of parts of Mueller’s report relating to the President?

RESPONSE: (b) (5)

- d. 28 CFR 600.9(c) provides that “The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions” (emphasis added). Do you read the term “these reports” to include the report issued by the Special Counsel to the Attorney General pursuant to 28 CFR 600.8(c)?

RESPONSE: (b) (5)

- e. 28 CFR 600.9(c) also provides that “All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law.” Is it your view that this sentence governs the release of information concerning matters handled by Special Counsels to Congress, as opposed to public release?

RESPONSE: (b) (5)

- f. Do you adhere to OLC’s view, stated in its October 16, 2000 opinion “A Sitting President’s Amenability to Indictment and Criminal Prosecution,” that “a sitting President is immune from indictment as well as from further criminal process” and that the Constitution provides the Legislative Branch the only authority to bring charges of criminal misconduct against a president through the impeachment process?

RESPONSE: (b) (5)

- g. If you believe the answer to (f) is yes, then shouldn't Congress be given access to the Special Counsel's full investigative findings so that Congress can best evaluate whether or not to hold a President accountable for potential criminal misconduct through the impeachment process?

RESPONSE: (b) (5)

- 5. At your hearing you said "well, under the current regulations the special counsel report is confidential. The report that goes public would be a report by the attorney general." You later said "the AG has some flexibility and discretion in terms of the AG's report."

If confirmed, will you use this flexibility and discretion to make sure the public can see Special Counsel Mueller's own words about his findings and conclusions to the greatest extent possible, rather than your own summary or interpretation of Special Counsel Mueller's words?

RESPONSE: (b) (5)

- 6. Do you agree with the statement of then-CIA Director Pompeo, who said on July 21, 2017 that "I am confident that Russians meddled in this election, as is the entire intelligence community....This threat is real."

RESPONSE: (b) (5)

- 7. Will you commit that, if you are confirmed:

- a. You would be willing to appear before the Senate Judiciary Committee to testify and answer questions specifically about the Special Counsel investigation after Special Counsel Mueller submits his concluding report?

RESPONSE: (b) (5)

- b. You would not object to Special Counsel Mueller appearing before the Senate Judiciary Committee to testify and answer questions about the Special Counsel investigation after he submits his concluding report?

RESPONSE: (b) (5)

- 8. During your confirmation hearing in 1991, you said "[t]here are a lot of different ways politics can come into play in a case." You went on to say "you shouldn't sweep anything under the rug. Don't cut anyone a special break. Don't show favoritism."

- a. Do you still stand by these principles?

RESPONSE: (b) (5)

- b. Will you ensure that Special Counsel Mueller's findings are made available to Congress and to the public, so that the Special Counsel's findings are not swept under a rug?

RESPONSE: (b) (5)

- c. The President's attorneys, led by Rudy Giuliani, are apparently preparing their own report to counter the Mueller report. Presumably there will be no redactions sought and no executive privilege claimed by the Administration over the contents of the Giuliani report, in contrast to the President's expected efforts to hide much of the Mueller report from Congress and the people. Are you concerned that it would seriously undermine the confidence of the American people in our justice system if the Special Counsel Mueller's findings were swept under the rug or heavily redacted while the full Giuliani report was tweeted out to the American people?

RESPONSE: (b) (5)

- 9. Other than your 19-page memo that you sent to Deputy Attorney General Rosenstein and OLC head Steven Engel on June 8, 2018, have you sent any other memos to Justice Department officials urging them to follow a course of action in an ongoing criminal investigation since you left the Department in 1993? If so, please describe the date and contents of each memo you sent.

RESPONSE: (b) (5)

- 10. Why did you not mention in your June 8, 2018 memo that you had met with President Trump in June 2017 and discussed the possibility of joining the President's legal defense team? Would that information have been relevant for the recipients of your June 8, 2018 memo to know?

RESPONSE: (b) (5)

- 11. On November 14, 2017, you emailed Peter Baker of *The New York Times* and said "I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] foundation, is far stronger than any basis for investigating so-called 'collusion.'"

- a. Why did you describe collusion as "so-called" in this email?
- b. Why did you put the word collusion in quotation marks in this email?
- c. Why have you long believed that the predicates for investigating the uranium deal and the foundation are "far stronger" than any basis for investigating potential crimes that are commonly described as falling under the umbrella of collusion?

RESPONSE: (b) (5)

12. Why did you put the word obstruction in quotation marks in the subject line of your June 8, 2018 memo?

RESPONSE: (b) (5)

13.

- a. Was Attorney General Sessions wise to follow the advice of DOJ ethics officials and recuse himself from matters relating to the presidential campaign, including the Mueller investigation?

RESPONSE: (b) (5)

- b. Was Acting Attorney General Whitaker unwise to disregard the advice of DOJ ethics officials that he should recuse himself from the Mueller investigation because a reasonable person would question his impartiality?

RESPONSE: (b) (5)

- c. What message does it send to the American people if Attorneys General establish a practice of disregarding the ethics advice of career DOJ ethics officials?

RESPONSE: (b) (5)

14. In your hearing testimony you quoted the following statement from your 1991 confirmation hearing: “The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics. Nothing could be more destructive of our system of government, of the rule of law, or the Department of Justice as an institution, than any toleration of political interference with the enforcement of law.”

President Trump has repeatedly denigrated Special Counsel Mueller and his investigation, calling it “unfair,” a “witch hunt” and a “hoax.” He also has tweeted and sent public signals to witnesses and targets in the investigation regarding their conduct. In your view, has the President gone too far with political interference in Mueller’s investigation?

RESPONSE: (b) (5)

15. When you were working as a private sector attorney:

- a. Did you ever represent Russian individuals or corporations as clients? If so, please provide details on the dates and nature of the representation.
- b. Did you ever have dealings with the Russian government or Russian oligarchs? If so, please provide details.

RESPONSE: (b) (5)

16. During your 1989 confirmation hearing to head the Office of Legal Counsel, you said at one point that the Attorney General is “the chief lawyer in the administration. He is the President’s lawyer; he is the lawyer for the cabinet” (emphasis added). Do you stand by this characterization of the Attorney General’s role?

RESPONSE: (b) (5)

17. During your hearing we discussed a January 25, 1996 speech you gave at the University of Virginia’s Miller Center, in which you essentially admitted to taking actions as Attorney General for political purposes. You said: “After being appointed, I quickly developed some initiatives on the immigration issue that would create more border patrols, change the immigration rules, and streamline the processing system. It would furthermore put the Bush campaign ahead of the Democrats on the immigration issue, which I saw as extremely important in 1992. I felt that a strong policy on immigration was necessary for the President to carry California, a key state in the election.”

This admission that you developed initiatives to “change the immigration rules” to “put the Bush campaign ahead” stands in stark contrast to the commitment you made in your 1991 confirmation hearing for Attorney General, where you said: “The Attorney General must ensure that the administration of justice, the enforcement of the law, is above and away from politics.”

- a. Why did you feel it was appropriate to develop initiatives to “change the immigration rules” as Attorney General for purposes of helping the political fortunes of the Bush campaign despite the commitment you made during your confirmation hearing?

RESPONSE: (b) (5)

- b. Is it appropriate for an Attorney General to “change the rules” to help the political campaign of the President who appointed him?

RESPONSE: (b) (5)

- c. If confirmed, do you believe it would be within your proper role to develop initiatives to “change the immigration rules” in ways that would help the 2020 Trump campaign?

RESPONSE: (b) (5)

18. In an April 5, 2001 panel at the University of Virginia’s Miller Center, you said “my experience with the Department is that the most political people in the Department of Justice are the career people, the least political are the political appointees.” Do you stand by this characterization of DOJ career employees?

RESPONSE: (b) (5)

19. Did anyone at the White House or the Justice Department advise you not to meet with Democratic members of this Committee in advance of the hearing, and if so, who gave you this advice?

RESPONSE: (b) (5)

20. On October 18, 2017, Attorney General Sessions testified before the Senate Judiciary Committee for a Department of Justice oversight hearing. This was the only time he testified before the Committee as Attorney General. At this hearing, Attorney General Sessions did not provide a written copy of his testimony to the Committee members in advance of the hearing; in fact, an electronic copy of his testimony was emailed to my committee staff by the Department only after the hearing had begun. As a result of this late submission, Committee members were denied the opportunity to prepare questions in advance based on the Attorney General's written testimony. Will you commit that if you are confirmed, you will provide your written testimony to the full Committee 24 hours in advance of each hearing where you testify in accordance with the Committee's long-standing rules?

RESPONSE: (b) (5)

21. Attorney General Sessions never provided responses to written questions from this Committee from the Department of Justice oversight hearing on October 18, 2017. Other former Department officials have provided responses to this Committee's oversight questions after they have left the Department, including former FBI Director Comey who provided responses on December 4, 2018 to written questions following his appearance before the Committee on May 3, 2017. If confirmed, will you ensure that the Committee receives prompt answers to all the written questions that were submitted to Attorney General Sessions from the October 18, 2017 oversight hearing?

RESPONSE: (b) (5)

22. I appreciate that in your testimony you pledged to "diligently implement" the First Step Act.

- a. Will you direct prosecutors not to oppose eligible petitions for retroactive application of the Fair Sentencing Act if you are confirmed?

RESPONSE: (b) (5)

- b. The First Step Act authorizes \$75 million in annual funding for the next five fiscal years to carry out the Act's provisions. The actual cost of implementation is likely to be higher, and the Bureau of Prisons is already facing severe funding and staffing shortages. Will you pledge that, if confirmed, you will ensure that the Justice Department's budget requests include an increase of at least \$75 million, as

authorized to implement the First Step Act, as well as any additional funding needed to address previous shortfalls?

RESPONSE: (b) (5)

- c. The First Step Act became law on December 21. It mandates the Attorney General begin immediate implementation of certain reforms, and establishes deadlines for others. Among other things, it requires that an Independent Review Committee be established by the National Institute of Justice by Tuesday, January 21, 2019. This deadline has already been missed.

The First Step Act requires the Attorney General, not later than 210 days after the date of enactment, and in consultation with the Independent Review Committee, to develop and release publicly on the Department of Justice website a risk and needs assessment system. What steps will you take in order to ensure the risk assessment system is established by this deadline if you are confirmed?

RESPONSE: (b) (5)

- d. The First Step Act broadens applicability of the Safety Valve under 18 U.S.C. § 3553(f). Do you agree that this change applies to cases where a sentence for the offense has not yet been imposed? If you are confirmed, what guidance will you provide to prosecutors on the applicability of the safety valve in such pending cases?

RESPONSE: (b) (5)

23. In 1993 you co-wrote an article in *The Banker* entitled “Punishment that exceeds the crime – The crackdown on corporate fraud threatens to stifle the financial system.” In this article, you criticized what you described as an “overly hostile enforcement atmosphere” when it comes to investigation and prosecution of corporate fraud and white collar crimes.” You said this aggressive enforcement risks deterring entrepreneurial investment and “offending our notions of fundamental fairness.”

- a. Why did you urge caution when it comes to investigating and prosecuting white collar crimes as opposed to your aggressive approach to investigating and prosecuting drug offenses?

RESPONSE: (b) (5)

- b. Should white collar criminals get different treatment from other criminals?

RESPONSE: (b) (5)

24. At a panel discussion before the Federalist Society in 1995 you said “violent crime is caused not by physical factors, such as not enough food stamps in the stamp program, but ultimately by moral factors.” You went on to say “spending more money on these material

social programs is not going to have an impact on crime, and, if anything, it will exacerbate the problem.”

Since you made these comments, new research has gone a long way toward rebutting them. For instance, scientific evidence now shows that childhood exposure to trauma affects brain development and perpetuates the cycle of violence. Social programs that help prevent and address exposure to trauma in children can have a significant impact on ending the cycle of violence.

- a. Do you regret these comments you made in 1995 to the Federalist Society?

RESPONSE: (b) (5)

- b. Have your views on the relationship between social programs and violent crime changed since 1995?

RESPONSE: (b) (5)

- c. Is it your view that white collar crime is also ultimately caused by moral factors?

RESPONSE: (b) (5)

25. In 1992, when you were Attorney General, you issued a lengthy report called “The Case for More Incarceration” that said: “First, prisons work. Second, we need more of them.” And in an October 2, 1991 speech you described a high prison population as “a sign of success.” Over the last three decades, as a result of stiff mandatory minimums, the federal prison population grew by over 700%, and federal prison spending climbed nearly 600%. Federal prisons now consume one quarter of the Justice Department’s budget. And we hold more prisoners, by far, than any other country in the world. America has five percent of the world’s population but 25 percent of the world’s prisoners – more than Russia or China.

Meanwhile, use of illegal drugs actually increased between 1990 and 2014. The availability of heroin, cocaine, and methamphetamine also increased. And recidivism rates for federal drug offenders did not decline. Today the data is clear – there is no significant relationship between drug imprisonment and drug use, drug overdose deaths, and drug arrests.

Have your views about the value of incarceration changed as a result of what we’ve learned in the last three decades?

RESPONSE: (b) (5)

26. Now, we are facing another deadly drug epidemic, and some are proposing that we again respond with harsh mandatory minimum sentences. Today, a large body of research establishes that stiffer prison terms do not deter drug use or distribution. Do you agree that we cannot incarcerate our way out of the fentanyl epidemic?

RESPONSE: (b) (5)

27. During your testimony before this Committee, you acknowledged that “the heavy drug penalties, especially on crack and other things, have harmed the black community, the incarceration rates have harmed the black community.”

On May 10, 2017, Former Attorney General Sessions directed all federal prosecutors to always seek the maximum penalty in federal criminal prosecutions. During your confirmation hearing, you testified that you intend to continue this policy unless “someone tells me a good reason not to.” Yet you also testified that the “draconian policies” enacted in reaction to the crack epidemic resulted in “generation after generation of our people . . . being incarcerated,” and that it is time to “change the policies.” I agree. This seems to be a “good reason” not to continue the Sessions policy, which applies to violent and non-violent offenders alike. Will you commit to reviewing and revising the Sessions charging guidance if you are confirmed as Attorney General?

RESPONSE: (b) (5)

28. In recent years, the Federal Bureau of Prisons (BOP) workforce has faced a number of significant challenges—including severe staffing shortages that jeopardize their ability to ensure the safety of inmates, staff, and the public. These staffing concerns resulted from a hiring freeze imposed by the Trump Administration and implemented by former Attorney General Sessions. Additional hiring was also delayed after President Trump proposed an FY 2019 budget that inexplicably sought to cut an additional 1,168 BOP positions, while projecting an increase in BOP’s prison population.

These staffing shortages have led to widespread reliance on “augmentation,” a practice that forces non-custody staff, such as secretaries, counselors, nurses, and teachers, to work as correctional officers—despite the fact that these employees lack the experience and extensive training of traditional correctional officers. Augmentation places staff at risk and reduces access to programming, recreation, and education initiatives—all of which are key to maintaining safe facilities and reducing recidivism.

- a. If confirmed, how will you address the ongoing staffing challenges at BOP?

RESPONSE: (b) (5)

- b. Will you commit, if confirmed, to ensuring that BOP is adequately staffed so that augmentation is no longer needed?

RESPONSE: (b) (5)

- c. The ongoing government shutdown has exacerbated an already-dangerous situation for BOP staff and has caused significant financial stress as they continue to work without a paycheck. If confirmed, how will you address the impact that this shutdown has had on BOP and other DOJ staff?

RESPONSE: (b) (5)

29. In an op-ed last November you praised Attorney General Sessions' immigration policies including, among other things, for "breaking the record for prosecution of illegal-entry cases." This praise came in the aftermath of Attorney General Sessions' disastrous "zero-tolerance" policy directing U.S. Attorneys along the Southwest border to criminally prosecute every illegal entry misdemeanor case referred by DHS, which included parents fleeing gang and sexual violence. The President of the American Academy of Pediatrics saw the zero-tolerance policy differently than you did— she called it "government-sanctioned child abuse". It led to the separation of thousands of families, some of whom have still not been reunited today.

a. As Attorney General, would you adhere to the zero-tolerance policy?

RESPONSE: (b) (5)

b. Do you think the zero-tolerance policy has been a success?

RESPONSE: (b) (5)

c. Was it appropriate for a Federal District Court Judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?

RESPONSE: (b) (5)

30. On June 5, 2018, when asked, "Is it absolutely necessary . . . to separate parents from children when they are detained or apprehended at the border?" Attorney General Sessions answered, "Yes." Yet on June 21, 2018, after widespread public backlash, Attorney General Sessions claimed that the Administration did not anticipate the separation of families, stating: "We never really intended to do that." The Justice Department's Inspector General (IG) is reviewing the Justice Department's poorly planned and chaotic implementation of the zero-tolerance policy.

a. Will you pledge that, if confirmed, you will implement the IG's recommendations so we can avoid a repeat of this disaster?

RESPONSE: (b) (5)

b. Do you agree with Attorney General Sessions' comment that it is absolutely necessary to separate parents from children when they are detained or apprehended at the border?

RESPONSE: (b) (5)

31. On June 17, 2018, DHS Secretary Nielsen stated on Twitter "We do not have a policy of separating families at the border. Period." Was this an accurate statement?

RESPONSE: (b) (5)

32. Justice Department resources were reportedly diverted from federal drug-smuggling felony cases to handle immigration charges under the zero-tolerance policy. Was the zero-tolerance policy a wise use of Department resources?

RESPONSE: (b) (5)

33. Congress received a letter on January 9, 2019 from Judge Ashley Tabaddor, the President of the National Association of Immigration Judges. Judge Tabaddor explained that every immigration judge across the country is currently in a no-pay status. She added that every day the immigration courts are closed, thousands of cases are cancelled and have to be indefinitely postponed.

Judge Tabaddor stated that there is currently a backlog of more than 800,000 pending immigration cases, an increase of 200,000 cases in less than two years despite the largest growth in the number of active immigration judges in recent history. At the end of Fiscal Year 2016 there were 289 active judges, while currently there are over 400.

Judge Tabaddor said “When a hearing is delayed for years as a result of a government shutdown, individuals with pending cases can lose track of witnesses, their qualifying relatives can die or age-out and evidence already presented become stale. Those with strong cases, who might receive a legal status, see their cases become weaker. Meanwhile, those with weak cases – who should be deported sooner rather than later – benefit greatly from an indefinite delay.”

Do you agree that the shutdown has hurt the administration of justice in our immigration courts and is worsening the immigration court backlog?

RESPONSE: (b) (5)

34. Do you believe a child can represent herself fairly in immigration court without access to counsel?

RESPONSE: (b) (5)

35. During the presidency of George H.W. Bush, the U.S. generously accepted refugees fleeing persecution from around the world. In Fiscal Year 1989 the U.S. resettled 107,070 refugees, in 1990, 122,066, in 1991, 113,389, and in 1992, 132,531. By contrast, in Fiscal Year 2018 the U.S. resettled just 22,491 refugees, less than half of the 50,000 target established by President Trump, and for 2019 the Trump Administration has established the lowest refugee admissions goal since the Refugee Admissions Program was created in 1980: a mere 30,000 refugees may be admitted this year, at a time when there are more than 25 million refugees worldwide, more than ever before, according to UNHCR.

- a. Did you have any role in the refugee admissions policy of the George H.W. Bush Administration, including providing any opinions to other cabinet departments and officials about the number of refugees admitted? Please describe your role, if any, in initiating and implementing this policy.

RESPONSE: (b) (5)

- b. Did you support the admission of over 100,000 refugees per year during President George H.W. Bush's Administration?

RESPONSE: (b) (5)

- c. Do you believe the refugee admissions ceiling established by President Trump for Fiscal Year 2019 (30,000) is an adequate response to the unprecedented global refugee crisis?

RESPONSE: (b) (5)

36. You have described yourself as a "strong proponent of executive power." In your June 8, 2018 memo, you went so far as to state that "constitutionally, it is wrong to conceive of the President as simply the highest officer within the Executive branch hierarchy. He *alone* is the Executive branch."

President Trump has taken an aggressive and expansive view of presidential power. He has shown contempt for the federal judiciary unlike any president we can recall. He has undermined and ridiculed your predecessor, whom he chose. He has shown disrespect for the rule of law over and over again.

- a. In light of this record, do you believe President Trump is a faithful steward of executive power?

RESPONSE: (b) (5)

- b. Do you stand by your argument that President Trump *alone* is the Executive branch?

RESPONSE: (b) (5)

- c. Are you concerned about President Trump continuing to abuse executive power?

RESPONSE: (b) (5)

- d. Are you confident that the Justice Department and OLC will serve as a check and balance on any abuses of executive power by President Trump?

RESPONSE: (b) (5)

37. On multiple occasions, President Trump has issued pardons without any apparent consultation or vetting from the DOJ Office of the Pardon Attorney. For example, Scooter Libby, Joe Arpaio and Dinesh D'Souza were all pardoned by President Trump without even applying for a pardon, let alone going through the Justice Department's vetting process.

- a. In your view, is it appropriate for a President to exercise the pardon power without any input from the Justice Department?

RESPONSE: (b) (5)

- b. If you are confirmed, would you insist on the Department having input into clemency decisions, including the opportunity for the Office of the Pardon Attorney to vet clemency applicants?

RESPONSE: (b) (5)

38. On June 15, 2018, President Trump's attorney Rudy Giuliani said of the Special Counsel's Russia investigation: "When this whole thing is over, things might get cleaned up with some presidential pardons."

- a. In your view, does a statement like this constitute inappropriate interference in an investigation?

RESPONSE: (b) (5)

- b. When does it cross into obstruction of justice for a President or his representative to publicly hint that the pardon power might be used to reward investigation witnesses and targets who refuse to cooperate?

RESPONSE: (b) (5)

- c. In your view, would it constitute inappropriate interference in Special Counsel Mueller's investigation for President Trump to issue pardons to people under investigation or indictment by Special Counsel Mueller?

RESPONSE: (b) (5)

- d. On June 4, 2018, President Trump tweeted "I have the absolute right to pardon myself." Do you agree?

RESPONSE: (b) (5)

- e. Would you advise a President against attempting to pardon himself?

RESPONSE: (b) (5)

- f. You have not been shy in discussing how you urged President George H.W. Bush to pardon Defense Secretary Caspar Weinberger and five other government officials involved in the Iran-Contra scandal. After President Bush issued these pardons in 1992, Lawrence Walsh, the independent counsel who led the Iran-Contra inquiry, said that the pardon of Weinberger and other Iran-contra defendants “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office — deliberately abusing the public trust without consequence.” If confirmed, how would you ensure that President Trump does not use the pardon power in a way that undermines the principle that no man is above the law?

RESPONSE: (b) (5)

39.

- a. As a general matter, do you believe it is a worthy goal for the Department of Justice to seek to remedy systematic constitutional and civil rights violations by police departments?

RESPONSE: (b) (5)

- b. On November 7, Attorney General Sessions issued a memo that drastically curtails DOJ pattern or practice investigations of police departments and limits the use of consent decrees to bring police departments into compliance with the Constitution. If confirmed, will you revisit the Sessions memo, which was hastily issued right before his resignation, to ensure the Department is fulfilling its responsibility to protect the American people from systemic Constitutional violations by police?

RESPONSE: (b) (5)

- c. In a March 31, 2017 memo, Attorney General Sessions stated that: “Local control and local accountability are necessary for effective local policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies.” Do you share that position? If so, was it inappropriate for Attorney General Sessions to petition a federal court in opposition to the policing reform consent decree that was independently negotiated between the City of Chicago and the Illinois State Attorney General last year?

RESPONSE: (b) (5)

40. Earlier this month, the *Washington Post* reported that the Trump Administration is “considering a far-reaching rollback of civil rights law that would dilute federal rules against discrimination in education, housing and other aspects of American life.”

Senior civil rights officials within DOJ were reportedly instructed to “examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be.” Officials at the Department of Education and

the Department of Housing and Urban Development are also reportedly reviewing disparate impact regulations under their jurisdictions.

Disparate impact liability is a key civil rights enforcement tool.

The Supreme Court reaffirmed this in a 2015 case, holding that disparate impact claims are cognizable under the Fair Housing Act. Justice Kennedy, writing for the majority, noted that “[m]uch progress remains to be made in our Nation’s continuing struggle against racial isolation.... But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse.” The opinion concluded with the Court acknowledging the Act’s “continuing role in moving the Nation toward a more integrated society.”

- a. Do you agree that disparate impact liability is an important and valid civil rights enforcement tool?

RESPONSE: (b) (5)

- b. If so, will you agree not to take any actions to undermine disparate impact liability if you are confirmed?

RESPONSE: (b) (5)

41. In your 1991 confirmation hearing, you said “discrimination is abhorrent and strikes at the very nature and fiber of what this country stands for.” You also said “I intend to be vigilant in watching for discrimination, and I intend to be aggressive in rooting it out and enforcing the laws against it wherever it is detected.”

- a. Do you stand by that pledge today?

RESPONSE: (b) (5)

- b. Does your pledge include discrimination against LGBTQ Americans?

RESPONSE: (b) (5)

- c. Do LGBTQ Americans face discrimination today?

RESPONSE: (b) (5)

- d. Do you believe LGBTQ Americans have protections against discrimination under federal law?

RESPONSE: (b) (5)

- e. If so, in your opinion, what is the scope of federal protections for LGBTQ Americans?

RESPONSE: (b) (5)

- f. Do you agree that an individual cannot choose or change their sexual orientation, any more than an individual can choose or change their race or national origin?

RESPONSE: (b) (5)

42. In recent years, you have made troubling statements in opposition to efforts to combat LGBTQ discrimination. For example, in November 2018, you wrote a joint op-ed with former Attorneys General Ed Meese and Michael Mukasey “saluting” former Attorney General Sessions. You specifically praised Sessions for changing DOJ’s litigation position to argue that transgender people are not protected by Title VII’s prohibition on sex-based discrimination in the workplace. You suggested that this reversal “help[ed] restore the rule of law.” Further, in a 2007 panel discussion, you criticized the Supreme Court’s decision in *Lawrence v. Texas*, stating that “the striking down of the anti-sodomy laws in Texas on the grounds that ‘liberty’ entails some right to engage in sodomy and therefore the state’s ability to regulate that... [threw] out hundreds of years of understanding about the ability of local and state governments to engage in ‘moral’ legislation.”

Do you stand by those statements today?

RESPONSE: (b) (5)

43. When former Attorney General Sessions came before this Committee for an oversight hearing in October 2017, I asked him about his recently-issued guidance to all administrative agencies and executive departments on religious liberty issues. You praised this guidance in your November 2018 joint op-ed.

However, the guidance has received significant criticism, particularly in relation to its impact on the rights of LGBTQ Americans. The Human Rights Campaign had this to say about the guidance:

“A preliminary analysis of the Trump-Pence administration’s license to discriminate indicates that LGBTQ people and women will be at risk in some of the following ways:

- A Social Security Administration employee could refuse to accept or process spousal or survivor benefits paperwork for a surviving same-sex spouse;
- A federal contractor could refuse to provide services to LGBTQ people, including in emergencies, without risk of losing federal contracts;
- Organizations that had previously been prohibited from requiring all of their employees from following the tenets of the organization’s faith could now possibly discriminate against LGBTQ people in the provision of benefits and overall employment status; [and]
- Agencies receiving federal funding, and even their individual staff members, could refuse to provide services to LGBTQ children in crisis, or to place

adoptive or foster children with a same-sex couple or transgender couple simply because of who they are.”

I asked then-Attorney General Sessions for his response to this analysis. He said he would get back to me, but he never did.

Do you believe that under this guidance, it is acceptable for a Federal government employee to cite their religious beliefs in refusing to serve or assist a same-sex couple?

RESPONSE: (b) (5)

44. In an April 1995 news report following the Oklahoma City bombing, you discussed the Bush administration’s work countering domestic right-wing groups. You said “[w]e were concerned about extreme rightwing groups in the country, but the surveillance and investigation of these groups was not as thorough as it should have been because of domestic restrictions.”

Right-wing extremism remains a significant threat today. To name just two recent examples, we’ve seen alleged fatal attacks by right-wing extremists in Charlottesville, Virginia and at the Pittsburgh Tree of Life Synagogue. A recent analysis by the *Washington Post* found the following: “Of 263 incidents of domestic terrorism between 2010 and the end of 2017, a third—92 —were committed by right-wing attackers.”

- a. Do you agree that “extreme right-wing groups,” to use your words, remain a significant domestic terrorism threat today?

RESPONSE: (b) (5)

- b. If confirmed, what steps will you take to combat this threat?

RESPONSE: (b) (5)

- c. Do you agree with President Trump’s statement that “You also had some very fine people on both sides” of the white supremacist demonstrations in Charlottesville?

RESPONSE: (b) (5)

- d. Will you pledge to ensure that the Department of Justice directs sufficient resources to combat domestic terrorism?

RESPONSE: (b) (5)

- e. Will you also commit to ensuring that the Department of Justice provides regular briefings to this Committee on the Department’s efforts to combat domestic terrorism?

RESPONSE: (b) (5)

45. In 2017, I introduced the Domestic Terrorism Prevention Act. This legislation would enhance the federal government's efforts to prevent domestic terrorism by requiring federal law enforcement agencies to regularly assess those threats and provide training and resources to assist state, local, and tribal law enforcement in addressing these threats.

Would you commit, if you are confirmed, to review this legislation and give us your feedback on it?

RESPONSE: (b) (5)

46. During your tenure as Attorney General, you oversaw the publication of the Justice Department's annual reports. The 1992 report emphasized the Department's "efforts to assure minorities a fair opportunity to elect candidates of their choice to public office through its administrative review of voting changes under Section 5 of the Voting Rights Act, as well as through litigation."

The 1992 report also specifically noted that "[t]he Attorney General interposed Section 5 objections to 16 statewide redistricting plans," including in Alabama, Georgia, and North Carolina.

Unfortunately, in 2013, a divided Supreme Court voted 5-4 in *Shelby County v. Holder* to gut the Voting Rights Act. The Court struck down the formula that determined which jurisdictions were subject to Section 5 preclearance.

- a. In your experience as Attorney General, did you find Section 5 preclearance to be an effective tool to combat voter suppression efforts?

RESPONSE: (b) (5)

- b. In light of your experience, what was your reaction to the *Shelby County* decision?

RESPONSE: (b) (5)

- c. What role do you believe that the Voting Section of the Civil Rights Division should play in enforcing federal voting laws?

RESPONSE: (b) (5)

- d. If confirmed, will you commit to ensuring that the Voting Section of the Civil Rights Division will be more aggressive in pursuing Section 2 cases against states and localities engaging in voter suppression efforts?

RESPONSE: (b) (5)

47. In the lead-up to the 2018 midterm election, we saw a number of significant voter suppression efforts across the country:

- Several states engaged in significant voter purges—a problematic method of cleaning up voter registration rolls that often deletes legitimate registrations, preventing voters from casting their ballots on Election Day. For example, in Georgia, on a single day in July 2017, more than a half million people were purged from the voter rolls—which totaled eight percent of Georgia's registered voters.
- Georgia also employed a controversial “exact match” system, which required names on voter registration records to exactly match voters’ names in the state system—so if you filled out one form as “Tom” and another as “Thomas,” your registration would be blocked. This led to 53,000 “pending” registrations being held up in the weeks before the election; nearly 70 percent of these registrations were for African-American voters.
- In North Dakota, a strict new voter ID law went into effect that required voters to present an ID with their residential street address. It was clear that the law would have a disproportionate impact on Native American communities, in which many community members do not have street addresses. It was estimated that 5,000 Native American voters would need to obtain qualifying identification before Election Day.
- Voters across the country also saw reduced access to voting after state and local governments shuttered polling locations and curtailed early voting opportunities. In Florida, election officials were ordered to block early voting at the state’s college and university campuses. And since the Supreme Court’s 2013 ruling in *Shelby County v. Holder* to gut the Voting Rights Act, almost 1,000 polling locations across the country have been closed—many of them in predominantly minority communities.

a. Do you agree that these are examples of voter suppression?

- i. If so, what steps would you take as Attorney General to address similar voter suppression efforts in the future?

RESPONSE: (b) (5)

- ii. If not, what do you consider to be an incident of voter suppression?

RESPONSE: (b) (5)

b. Do you think voter fraud is a problem that justifies these types of restrictive voting measures?

RESPONSE: (b) (5)

c. Do you agree with President Trump’s claims that 3-5 million people illegally voted in the 2016 election?

RESPONSE: (b) (5)

48. Despite frequent claims from Republicans that voter fraud is a rampant problem that must be addressed through restrictive voter laws, the most salient recent example of alleged election fraud was perpetrated by a Republican in the 9th Congressional District of North Carolina. A Republican House candidate, Mark Harris, apparently employed contractors who collected absentee ballots from mostly African-American voters and either filled them out for Harris or discarded them if they supported Harris' opponent. The North Carolina State Board of Elections has refused to certify Harris' purported 900-vote victory, and a local prosecutor has confirmed that an investigation is underway.

Do you support a federal investigation into apparent election fraud in North Carolina's 9th District?

RESPONSE: (b) (5)

49. In your 1991 confirmation hearing, you were asked your views on the right to privacy. You stated:

I believe that there is a right to privacy in the Constitution...I do not believe the right to privacy extends to abortion, so I think that my views are consistent with the views that have been taken by the Department since 1983, which is that *Roe v. Wade* was wrongly decided and should be overruled.

Do you stand by that statement today in light of the Court's subsequent decisions in *Planned Parenthood v. Casey* (1992) and *Whole Women's Health v. Hellerstedt* (2016), which each affirmed the right to abortion?

RESPONSE: (b) (5)

50. Attorney General Sessions tried to block federal Byrne-JAG violence prevention grant funds in an effort to try to force unrelated immigration policy reforms on cities and states. At least 5 district courts and the 7th Circuit have held that the Justice department does not have the authority to impose unrelated grant conditions on programs like Byrne-JAG. However, Attorney General Sessions nonetheless refused to release these vital funds to cities like Chicago, which hurts the fight against deadly gun violence.

I don't think the Byrne-JAG program should be used as a political football in the immigration debate. Byrne-JAG is a formula grant program that was designed by Congress to give state and local jurisdictions flexibility to address their public safety needs. Ironically, the Byrne-JAG program was named for a New York City police officer who heroically gave his life to protect an immigrant witness who was cooperating with law enforcement.

Will you commit that if you are confirmed you will stop DOJ's withholding of Byrne-JAG funds to state and local communities as part of an effort to force immigration policy reforms?

RESPONSE: (b) (5)

51. In a June 5, 2005 hearing before the Senate Judiciary Committee, you said regarding the Bush Administration's detention policy: "Rarely have I seen a controversy that has less substance behind it. Frankly, I think the various criticisms that have been leveled at the administration's detention policies are totally without foundation and unjustified." In July 2005, you sat on a panel entitled "Civil Liberties and Security" hosted by the 9/11 Public Disclosure Project and said that "under the laws of war, absent a treaty, there is nothing wrong with coercive interrogation, applying pain, discomfort, and other things to make people talk, so long as it doesn't cross the line and involve the gratuitous barbarity involved in torture."

- a. Do you reject the reasoning of the OLC "torture memo," which claimed that the torture statute unconstitutionally infringed on the President's authority as Commander-in-Chief and was subsequently rescinded by the Bush Administration Justice Department?

RESPONSE: (b) (5)

- b. Do you acknowledge that the McCain Detainee Treatment Act, which passed the Senate with 90 votes in 2005 and which outlawed cruel, inhuman and degrading treatment, is constitutional? Do you pledge to abide by it?

RESPONSE: (b) (5)

- c. Is waterboarding torture?

RESPONSE: (b) (5)

- d. Can terrorists be successfully prosecuted and incarcerated in our domestic criminal justice system?

RESPONSE: (b) (5)

52. Under Attorney General Sessions, the Justice Department changed its previous litigation position and decided to stop defending the constitutionality of the Affordable Care Act in court, instead arguing that the ACA's protections for people with pre-existing conditions should be invalidated. Two career DOJ attorneys withdrew from the case rather than sign DOJ's brief, and one of these attorneys resigned.

- a. Was it appropriate for the Justice Department to change its previous litigation position and decline to continue defending the constitutionality of the Affordable Care Act?

RESPONSE: (b) (5)

- b. Did you agree with that decision?

RESPONSE: (b) (5)

- c. Will you review the Department's decision if you are confirmed?

RESPONSE: (b) (5)

- d. You have previously argued in an amicus brief that the Affordable Care Act is unconstitutional. Do you still hold that view?

RESPONSE: (b) (5)

53. You have described Attorney General Sessions as "an outstanding attorney general" in your November 2018 *Washington Post* op-ed. Please identify any actions or policies that Attorney General Sessions implemented during his tenure that you think were misguided and that should be revisited by the next Attorney General.

RESPONSE: (b) (5)

54. In order to reduce the number of shootings in Chicago, we must address the flow of illicitly-trafficked guns from out-of-state into the city.

- a. Will you commit that, if you are confirmed, you will make it a priority of the Department of Justice to investigate and prosecute those who are selling guns that supply Chicago's criminal gun market?

RESPONSE: (b) (5)

- b. If you are confirmed, what steps will you take to ensure that cases involving straw purchasing, gun trafficking, and dealing in firearms without a license are prosecuted?

RESPONSE: (b) (5)

- c. Will the Department of Justice's budget requests support additional resources, specifically for ATF, to enforce these laws?

RESPONSE: (b) (5)

- d. If confirmed as Attorney General, would you take steps to enable and encourage all state and local law enforcement agencies to use eTrace and NIBIN for all guns and ammunition casings recovered in crimes?

RESPONSE: (b) (5)

55. There is an important program in the Justice Department's Office of Justice Programs called the John R. Justice Program. Named after the late former president of the National District Attorneys Association, the John R. Justice Program provides student loan repayment assistance to state and local prosecutors and public defenders across the nation

Congress created this program in 2008 and modeled it after a student loan program that DOJ runs for its own attorneys. The John R. Justice program helps state and local prosecutors and defenders pay down their student loans in exchange for a three-year commitment to their job. This is a very effective recruitment and retention tool for prosecutor and defender offices. And since DOJ is giving hundreds of millions of dollars in grants each year to state and local law enforcement, which generates more arrests and more criminal cases, it is critical that we help prosecutor and defender offices keep experienced attorneys on staff to handle these cases.

The John R. Justice Program has helped thousands of prosecutors and defenders across the country. But for the program to remain successful, the Department of Justice must remain committed to funding this program and to carefully administering it.

Will you commit to support this program during your tenure if you are confirmed?

RESPONSE: (b) (5)

56. In your 1991 confirmation hearing you were asked by Senator Thurmond about the pace of filling judicial vacancies while you were Deputy Attorney General. You said "it is a long process because we have to make sure that we are putting people who have the proper character and integrity and competence on the bench, and that requires the FBI background check, it requires the ABA screening process, and that takes a lot of time."

- a. Is it still your view that the ABA screening process is required to ensure that judicial nominees have the proper character, integrity and competence to serve on the bench?

RESPONSE: (b) (5)

- b. If so, will you commit to doing all in DOJ's power to ensure that the Committee has the benefit of the results of the ABA screening process before the Committee holds a hearing on a judicial nominee?

RESPONSE: (b) (5)

57. Will you commit that, if you are confirmed, you will take steps to ensure that the FBI and the Department of Justice work together to improve hate crime reporting by state and local law enforcement?

RESPONSE: (b) (5)

58. When I was Chairman of the Subcommittee on the Constitution, Civil Rights, and Human Rights, I held two hearings on the human rights, fiscal, and public safety consequences of solitary confinement. Anyone who heard the chilling testimony of Anthony Graves and Damon Thibodeaux—exonerated inmates who each spent more than a decade in solitary confinement—knows that this is a critical human rights issue that we must address.

In light of the mounting evidence of the harmful—even dangerous—impacts of solitary confinement, states around the country have led the way in reassessing the practice. Some progress was made at the federal level as well; however, much of the progress has been erased during the Trump Administration, and there are currently more than 11,000 federal inmates in segregation.

- a. Do you believe that long-term solitary confinement can have a harmful impact on inmates?

RESPONSE: (b) (5)

- b. If you are confirmed, can you assure me that you will examine the evidence and work with BOP to make ensure that solitary confinement is not overused?

RESPONSE: (b) (5)

59. When asked at your hearing about the Foreign Emoluments Clause to the Constitution, you said “I cannot even tell you what it says at this point.”

The Foreign Emoluments Clause in Art. I, Section 9, Clause 8 of the Constitution states that “No Title of Nobility shall be granted by the United States; and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”

The Foreign Emoluments Clause reflects a fundamental priority of the Founding Fathers as they designed our form of government. They were worried about foreign powers attempting to influence and corrupt the leadership of our nation, so the Constitution included safeguards against pressure from such powers, particularly the Foreign Emoluments Clause, which was adopted unanimously at the Constitutional Convention. As Delegate Edmund Randolph of the Continental Congress said during the ratification debates in Virginia, “[i]t was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.”

- a. Do you believe that all current provisions of the Constitution must be followed and enforced, including the Foreign Emoluments Clause?

RESPONSE: (b) (5)

- b. If you are confirmed as Attorney General, what steps will you take to ensure that the Foreign Emoluments Clause is followed and enforced?

RESPONSE: (b) (5)

60.

- a. In an April 5, 2001 interview, conducted in connection with the preparation of an oral history of the presidency of George H.W. Bush, you called the *qui tam* provisions of the False Claims Act “an abomination and a violation of the Appointments Clause under the due powers of the President. . . .” At your hearing you said you no longer consider the False Claims Act an abomination. What changed your mind?

RESPONSE: (b) (5)

- b. In 2000, the year before your April 5, 2001 interview, the Supreme Court made it clear in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*--a decision authored by Justice Scalia--that *qui tam* relators have Article III standing to bring False Claims Act cases on behalf of the government. Do you think this case was wrongly decided?

RESPONSE: (b) (5)

- c. If you are confirmed, will you commit to vigorously enforcing the False Claims Act and its *qui tam* provisions?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR WHITEHOUSE

1. In October 1973, during the Watergate scandal, President Nixon ordered the firing of independent special prosecutor Archibald Cox, who was investigating Nixon's role in the scandal. Then-Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus refused to fire Cox and resigned in protest, but the next in command, Robert Bork, was willing to carry out the firing. This was the infamous Saturday Night Massacre, and the American people were rightly outraged by this attack on the rule of law. In the aftermath of that event, largely in response to that public outrage, acting Attorney General Bork agreed to enter into a written delegation agreement to ensure the independence of Cox's successor, Leon Jaworski. The Bork order contained much stronger provisions to protect the independence of the special prosecutor investigation than is now found in the Department of Justice guidelines that govern the Mueller inquiry. These included (1) protections against termination without cause; (2) limitations on the day-to-day supervision of and interference with the investigation, including with respect to the scope of the investigation; (3) assurances that the special prosecutor would have access to all necessary resources; and (4) assurances that the special prosecutor be permitted to communicate to the public and submit a final report to appropriate entities of Congress and make such a report public.

At your nomination hearing, you pledged a number of protections for the special counsel. Reviewing the Bork order, please identify any areas in which you intend to provide less protection or independence to the Special Counsel than was provided therein.

RESPONSE: (b) (5)

2. Will you object to Special Counsel Mueller testifying publicly before Congress if invited (or subpoenaed)?

RESPONSE: (b) (5)

3. Under the Special Counsel regulations, "at the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel." Subject to any claims of privilege, will you commit to producing the Special Counsel's concluding report in response to a duly issued subpoena from the Judiciary Committee of either the House or Senate?

RESPONSE: (b) (5)

4. Referring to former FBI Director Comey's conduct in the lead-up to the 2016 election, you testified that "if you are not going to indict someone, then you do not stand up there and unload negative information about the person. That is not the way the Department of Justice does business." As I told you during our private meeting, when it comes to ordinary prosecutorial decisions, I wholeheartedly agree. How does that general principle apply to the required report of the Special Counsel?
- a. Is it your view that DOJ regulations, policy, and practice forbid public discussion of wrongdoing whenever the Department of Justice has declined to seek indictments related to such wrongdoing? Are there any differences in how those regulations, policies, and practice govern a Special Counsel report?

RESPONSE: (b) (5)

- b. Is it your view that DOJ regulations, policy, and practice also forbid the indictment of a sitting president? If so, how can the policy obtain Article III review so that a court may "say what the law is"? Should OLC be the final arbiter of this controversial question?

RESPONSE: (b) (5)

- c. What if there are grounds to indict and the sole reason for declination is the current DOJ policy against indicting a sitting president?

RESPONSE: (b) (5)

- d. Should derogatory information against an uncharged president or other official subject to impeachment be provided to Congress? How is Congress to exercise its constitutional rights and carry out its constitutional obligations if such information is shielded?

RESPONSE: (b) (5)

- e. Should we interpret your statements at the hearing that (1) derogatory information against an uncharged individual should not be disclosed and (2) a sitting president cannot be indicted to mean that you would not release to Congress any contents of the Mueller report that contain negative information about President Trump? If we should not, why not?

RESPONSE: (b) (5)

- f. If the Mueller investigation uncovers evidence of criminality by the President, but DOJ declines to prosecute solely on the basis of the OLC memo prohibiting

indictment of a sitting president, and DOJ policy meanwhile prohibits the disclosure of derogatory information about an uncharged individual, will you keep from Congress and the American people evidence that the President may have committed criminal acts?

RESPONSE: (b) (5)

- g. With respect to OLC's conclusion that the president cannot be indicted under any circumstances while in office, is there any other person in the country who similarly cannot be indicted under any circumstances?

RESPONSE: (b) (5)

- h. Do the public and Congress have a significant interest in facts indicating criminal wrongdoing by the President of the United States while in office?

RESPONSE: (b) (5)

- i. Do you agree that Congress has a constitutional responsibility to investigate and prosecute a President for high crimes and misdemeanors when warranted?

RESPONSE: (b) (5)

- j. Do you agree that, in order to carry out its constitutional responsibilities, Congress should be made aware by the executive branch of conduct potentially constituting high crimes and misdemeanors?

RESPONSE: (b) (5)

5. Please describe the nature of your relationship with White House Counsel Pat Cipollone, including any shared organizational affiliations.

RESPONSE: (b) (5)

6. Deputy White House Counsel John Eisenberg, a former partner at your law firm Kirkland & Ellis, received a broad ethics waiver allowing him to "participate in communications and meetings where [Kirkland] represents parties in matters affecting public policy issues which are important to the priorities of the administration." What

discussions, if any, have you had with Deputy Counsel Eisenberg since he received that waiver? Please identify any specific matter and/or client discussed, and the details of any such discussion.

RESPONSE: (b) (5)

7. In your nomination hearing, you told me you would commit to complying with the existing DOJ policy limiting contacts between the White House and the DOJ regarding pending criminal matters, and would perhaps tighten those restrictions.
- a. Will you reaffirm that commitment?

RESPONSE: (b) (5)

- b. In what circumstances would it be appropriate for you, if confirmed as AG, to discuss a pending criminal matter with the White House?

RESPONSE: (b) (5)

- c. What is the goal of restrictions on communications between DOJ and the White House regarding ongoing investigations and prosecutions?

RESPONSE: (b) (5)

8. On February 14, 2018, the Washington Post reported that then-White House counsel Donald McGahn made a call in April 2017 to Acting Deputy Attorney General Dana Boente in an effort to persuade the FBI director to announce that Trump was not personally under investigation in the probe of Russian interference in the 2016 election.

On September 13, 2017, White House Press Secretary Sarah Huckabee Sanders suggested from the Press Secretary podium that the Department of Justice prosecute Former FBI Director James Comey.

On December 2018, CNN reported that President Trump “lashed out” at Acting Attorney General Whitaker on at least two occasions because he was angry about the actions of federal prosecutors in the Southern District of New York in the Michael Cohen case, in which SDNY directly implicated the president – or “Individual 1” – in criminal wrongdoing. According to reports, Trump pressed Whitaker on why more wasn't being done to control the prosecutors who brought the charges in the first place, suggesting they were going rogue.

Assuming these reports are accurate, did each of these contacts comply with the governing policy limiting DOJ-White House contacts regarding pending criminal matters, and would you permit them under your contacts rule?

RESPONSE: (b) (5)

9. On January 3, 2019, CNN reported that Acting Attorney General Whitaker spoke in private with former Attorney General and Federalist Society co-founder Edwin Meese, who is now a private citizen. During that meeting, Whitaker reportedly told Meese that the U.S. Attorney in Utah is continuing to investigate allegations that the FBI abused its powers in surveilling a former Trump campaign adviser and should have done more to investigate the Clinton Foundation.

a. Do those communications seem proper to you?

RESPONSE: (b) (5)

b. Under what circumstances would you allow officials of the Department to discuss a pending DOJ criminal investigation with a non-witness private citizen?

RESPONSE: (b) (5)

10. Do you believe that the Presidential Communications Privilege extends to the President's communications with the Attorney General?

a. Are you bound by the D.C. Circuit holding that "the [Presidential Communications] privilege should not extend to staff outside the White House in executive branch agencies"? *In re Sealed Case (Espy)*, 121 F.3d 729 (D.C. Cir. 1997).

RESPONSE: (b) (5)

b. Under what circumstances would you fail to abide by the limitations on the Presidential Communications Privilege set forth in *In re Sealed Case (Espy)*?

RESPONSE: (b) (5)

11. In our one-on-one meeting, you told me you would "not support the assertion of executive privilege if [you] concluded that it was designed to cover up a crime."

a. To be clear, would you support the assertion of executive privilege if asserted to cover up a crime?

RESPONSE: (b) (5)

b. Would you support the assertion of executive privilege in order to cover up facts that amount to a chargeable crime but for the fact that the subject cannot under DOJ/OLC policy be indicted?

RESPONSE: (b) (5)

- c. If you conclude that the president is asserting executive privilege over, for example, evidence in the Mueller report in order to cover up a crime, what specifically would you do to stop it?

RESPONSE: (b) (5)

- d. If an assertion of executive privilege is invalid as asserted to cover up a crime, is there any reason Congress should not be informed to accomplish its constitutional duties of oversight and/or impeachment?

RESPONSE: (b) (5)

- e. If you conclude that the president has claimed executive privilege in order to cover up evidence of a crime over your objection, would you inform Congress about your conclusion?

RESPONSE: (b) (5)

- 12. During the confirmation proceedings for Justice Kavanaugh, the Trump administration withheld tens of thousands of pages of relevant documents on the vague ground of “constitutional privilege.” Because the Judiciary Committee Chairman did not challenge that assertion, the administration never had to defend it. The administration also failed to produce a privilege log, which would have allowed us to understand the nature of the documents over which the administration was asserting privilege.

- a. If the president seeks to withhold information from Congress on grounds of privilege, will you commit to producing a privilege log that identifies, at a minimum, the participants/custodians of the document/exchange, as well as the basis for the privilege assertion (presidential communication, deliberative process, attorney-client, etc.)? If not, why not?

RESPONSE: (b) (5)

- 13. Do you believe the President or DOJ can withhold information from Congress without a formal assertion of executive privilege, beyond the time nominally necessary for review and decision as to whether the president shall assert the privilege?

RESPONSE: (b) (5)

- 14. Our committee has not received answers to questions for the record submitted to Attorney General Sessions after the DOJ Oversight hearing in October 2017. Over a year has passed since then.

- a. Do you think it is acceptable that DOJ has failed to respond to these

oversight questions?

RESPONSE: (b) (5)

- b. Will you commit to providing answers to those outstanding questions by March 1, 2019? If not, why not? And by when will you commit to answering them?

RESPONSE: (b) (5)

15. Will you commit to providing timely answers to questions for the record submitted in connection with future DOJ oversight hearings? What specific time frame will you commit to?

RESPONSE: (b) (5)

16. Will you commit to responding to oversight requests submitted by the minority party?

RESPONSE: (b) (5)

17. Under what circumstances do you think it would be appropriate for DOJ to take longer than six months to respond to an oversight request?

RESPONSE: (b) (5)

18. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position in the Trump White House? With whom? When? What was the substance of the conversation?

- a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?

RESPONSE: (b) (5)

19. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position on the President's personal legal team? With whom? When? What was the substance of the conversation?

- a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?

RESPONSE: (b) (5)

20. Did you have any communications prior to your nomination about Special Counsel Robert Mueller's investigation with any person who holds or has held a position in the Department of Justice? With whom? When? What was the substance of the

conversation?

- a. What, if anything, did the President's lawyers tell you about what Special Counsel Mueller and his office had conveyed to them about the Special Counsel's view of the obstruction of justice statutes?

RESPONSE: (b) (5)

21. On June 8, 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel titled "Mueller's 'Obstruction' Theory," in which you wrote that Special Counsel Mueller's "obstruction theory is fatally misconceived." You also stated your memo was unsolicited.

Please provide a full accounting of the preparation of that memo including:

- a. Why did you submit an unsolicited memo about a pending investigation to the Department of Justice?
- b. Why did you think your opinion was relevant if, as you acknowledged, you were "in the dark about many facts"?
- c. How did you know what Mueller's obstruction theory was? With whom did you discuss that before you drafted your memo?
- d. At your confirmation hearing, you stated that you were "speculating" about Mr. Mueller's interpretation of 18 U.S.C. § 1512. How did you know Mueller was contemplating a case under Section 1512? Did anyone tell you this? If so, who?
- e. Please list all persons with whom you had communications related to the memo before June 8, particularly any person at the Trump White House, on President Trump's legal team, in the Department of Justice, or among Republican House committee members or staff?
- f. Please list all persons with whom you had communications related to the memo on or after June 8, particularly any person at the Trump White House, on President Trump's legal team, in the Department of Justice, or among Republican House committee members or staff?
- g. Did you discuss the memo before June 8 with any person currently or formerly associated with the Federalist Society? If so, who?
- h. Did you receive assistance from anyone in writing or researching your memo?
- i. Who paid you for the time it took you to write and research this memo?
- j. How was the memo transmitted to the Department of Justice? Were there emails or other cover documents associated with its transmission? **If so, please attach these to your answer.**

- k. Discussing your memo, Rod Rosenstein was quoted in a December 20, 2018, *Politico* article as saying: “I didn’t share any confidential information with Mr. Barr. He never requested that we provide any non-public information to him, and that memo had no impact on our investigation.” Did you request that DOJ provide you any information about the Mueller investigation? If so, what did you request, from whom did you request it, and what was provided?

RESPONSE: (b) (5)

22. On the first page of your June 8 memo, while criticizing Mueller’s obstruction theory, you acknowledged that “[o]bviously, the President and any other official can commit obstruction in this classic sense of sabotaging a proceeding’s truth-finding function. Thus, for example, if a President knowingly destroys or alters evidence, suborns perjury, or induces a witness to change testimony, or commits any act deliberately impairing the integrity or availability of evidence, then he, like anyone else, commits the crime of obstruction.”
- a. You’ve stated that you believe the OLC opinion that a sitting president cannot be indicted is correct. If that is the case, what would you do if the Mueller investigation presented you with evidence that led you to conclude President Trump had committed obstruction of justice in, as you say, the “classic sense”? How about treason?

RESPONSE: (b) (5)

23. During your nomination hearing, as in your June 8 memo, you raised a point about the meaning of the word “corruptly” in the federal corruption statutes. You argued that “Mueller offers no definition of what ‘corruptly’ means,” and that “people do not understand what the word ‘corruptly’ means in that statute [18 U.S.C § 1512(c)]. It is an adverb, and it is not meant to mean with a state of mind. It is actually meant the way in which the influence or obstruction is committed. . . . [I]t is meant to influence in a way that changes something that is good and fit to something that is bad and unfit, namely the corruption of evidence or the corruption of a decisionmaker.” Later, you cited *United States v. Poindexter*, 951 F.2d 369, 379 (D.C. Cir. 1991) as having the “most intelligent discussion of the word ‘corruptly.’”
- a. How did Congress’s passage of the False Statements Accountability Act of 1996, as codified in 18 U.S.C § 1505, affect the *Poindexter* ruling? That Act provides that the term “‘corruptly’ means ‘acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.’”
- b. While the False Statements Accountability Act of 1996, on its face, applies only to Section 1505, the legislative history makes clear that the bill’s goal was to align the construction of “corruptly” in Section 1505 with interpretation of that term in the other obstruction statutes, including 18 U.S.C. § 1512. For example, Senator Levin, one of the bill’s sponsors, said that the bill would “bring [Section 1505]

back into line with other obstruction statutes protecting government inquiries.” Do you believe that the meaning of the term “corruptly” in Section 1512 should be different from the meaning of that identical term in Section 1505?

- c. It is now the consensus view among courts of appeals and the position of the Department of Justice that the term “corruptly,” including in 18 U.S.C. § 1512(c), means motivated by an “improper purpose.”¹ Will you abide by that consensus position? Given the specific definition of “corruptly” set forth in the False Statements Accountability Act of 1996, what is now “very hard to discern” about the meaning of the term “corruptly” as used in the federal obstruction statutes? If confirmed, will you apply the definition of “corruptly” set forth in the False Statements Accountability Act of 1996 in enforcing the federal obstruction of justice statutes, including Section 1512(c)? If not, why not?
- d. Your June 8 memo includes no reference to the False Statements Accountability Act of 1996 or its definition of “corruptly.” Why?

RESPONSE: (b) (5)

24. On May 12, 2017, you published an op-ed in the Washington Post defending President Trump’s firing of FBI Director James Comey.
- a. Did anyone ask you to write that op-ed, or suggest that you write it? If so, who?
 - b. Did you have any communications related to the op-ed with any person at the Trump White House, President Trump’s legal team, the Department of Justice, or Republican House committee members or staff?
 - c. Did you discuss the op-ed before its publication with any person currently or formerly associated with the Federalist Society?
 - d. Did you share any draft of your op-ed with any person prior to sending it to the Department of Justice? If so, with whom?

RESPONSE: (b) (5)

¹ *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (“Acting ‘corruptly’ within the meaning of § 1512(c)(2) means acting with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct . . .” (internal quotation marks omitted)); *United States v. Mintmire*, 507 F.3d 1273, 1289 (11th Cir. 2007) (“‘corruptly’ as used in Section 1512(c)(2) means ‘with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct’ an official proceeding); *United States v. Arthur Andersen LLP*, 374 F.3d 281, 296 (5th Cir. 2004) (“Under the caselaw, ‘corruptly’ requires an improper purpose” (emphasis in original)), *rev’d and remanded on other grounds*, 544 U.S. 696 (2005); *United States v. Thompson*, 76 F.3d 442, 452 (2d Cir. 1996) (noting that “we have interpreted the term ‘corruptly,’ as it appears in § 1503, to mean motivated by an improper purpose,” and extending that interpretation to Section 1512); *Brown v. United States*, 89 A.3d 98, 104 (D.C. 2014) (“individuals act ‘corruptly’ when they are ‘motivated by an improper purpose’”).

25. During your nomination hearing, I outlined for you my concern with Matthew Whitaker's (and other Trump appointees') failure to identify the sources of funding behind payments received for partisan activities before his appointment. Since 2015, Mr. Whitaker has received more than \$1.2 million in compensation from FACT, a 501(c)(3) organization promoting "accountability" from public officials. Between 2014 and 2016, FACT received virtually all of its funding—approximately \$2.45 million— from a donor-advised fund called DonorsTrust. DonorsTrust has been described as "the dark-money ATM for the right," which "allows wealthy contributors who want to donate millions to the most important causes on the right to do so anonymously, essentially scrubbing the identity of those underwriting conservative and libertarian organizations." During and after his tenure at FACT, the organization has filed at least fourteen complaints and requests for investigations with the Department of Justice, the Internal Revenue Service, and the Federal Election Commission against Secretary of State Hillary Clinton, various Democratic members of Congress, Democratic Party leaders, and Democratic candidates.

- a. How can DOJ recusal and conflict of interest policies be effective if appointees fail to disclose true identities in funding, payments they have received, or political contributions or solicitations they have made, as part of their financial disclosures in the ethics review process?

RESPONSE: (b) (5)

- b. Where it appears that someone has made efforts to hide their identity, should ethics review make efforts to determine who the real party in interest is behind those efforts to hide their identity?

RESPONSE: (b) (5)

26. In your SJQ Questionnaire, you wrote "In the event of a potential conflict of interest, I will consult with the appropriate Department of Justice ethics officials and act consistent with governing regulations." Unlike many other nominees, including AG Sessions, you did not say you would follow ethics officials' recommendations with respect to conflicts of interest. You confirmed at your confirmation hearing that you would not "surrender" your authority to make the ultimate determination.

- a. Have you already concluded whether you should be recused from the Mueller investigation if confirmed?

RESPONSE: (b) (5)

- b. Given that, as a private citizen, you gave unsolicited advice directly to the President's legal team and to DOJ casting doubt on aspects of the Mueller investigation, do you understand public concern about your unwillingness either to agree to recuse from that investigation, or to follow the recusal guidance of career DOJ ethics officials, as past attorneys general have generally done?

RESPONSE: (b) (5)

- c. If you determine you will not comply with the recusal guidance of DOJ ethics officials, will you publicly explain your decision?

RESPONSE: (b) (5)

27. This month, my Judiciary Committee colleagues and I requested that OIG investigate the circumstances surrounding Acting AG Whitaker's refusal to comply with guidance from career DOJ ethics officials. Will you interfere with OIG's procedures concerning that requested investigation?

RESPONSE: (b) (5)

28. Please explain the commitments you made during the hearing to Chairman Graham that you will conduct DOJ investigations on specific issues he identified. Had you agreed with him in advance that the matters he raised should be investigated?

RESPONSE: (b) (5)

29. What weight will you give the ethics advice of career DOJ officials regarding recusal and conflicts of interest? What explanations will you commit to provide in cases where you choose not to follow their advice?

RESPONSE: (b) (5)

30. During your testimony, you described conversations you have had with Deputy Attorney General Rod Rosenstein about the terms and timing of his departure from DOJ if you are confirmed. Have you had any conversations with Matthew Whitaker about his future at DOJ if you are confirmed? If so, please describe those conversations, noting specifically whether you know whether Mr. Whitaker will remain at DOJ and in what role. If not, why haven't you spoken with him as you have with Mr. Rosenstein?

RESPONSE: (b) (5)

31. In our one-on-one meeting, you told me you would commit to ensuring that lawyers at DOJ, and at OLC specifically, would be held to the highest legal ethical standards, including a duty of candor. Will you reaffirm that commitment? How specifically will you implement it?

RESPONSE: (b) (5)

32. This month, the Washington Post published an op-ed by a former OLC attorney who acknowledged that under the Trump Administration, OLC lawyers have advanced pretextual arguments to defend Trump’s policies.² She identified OLC’s traditional deference to White House factual findings as the biggest problem under Trump, and said that she saw “again and again how the decision to trust the president failed the office’s attorneys, the Justice Department and the American people.” She wrote that OLC routinely failed to look closely at claims the president makes, and that if a lawyer identified “a claim by the president that was provably false, [they] would ask the White House to supply a fig leaf of supporting evidence.”

- a. Do you have any reason to doubt the allegations and admissions made in the Post op-ed?

RESPONSE: (b) (5)

- b. Is the OLC conduct described in the op-ed consistent with a lawyer’s duty of candor?

RESPONSE: (b) (5)

- c. How will you address the issue of deference to White House “fact-finding” given a president who, according to fact checkers, has lied more than 8,100 times since he took office?³

RESPONSE: (b) (5)

- d. Against that backdrop, under your leadership, will the Department continue its traditional practice of deferring to factual findings by the White House?

RESPONSE: (b) (5)

- e. Do you agree that the Post op-ed raises serious concerns about the possibility that OLC is complicit in creating pretextual justifications for proposed administration actions?

RESPONSE: (b) (5)

- f. If confirmed, what will you do to address these concerns?

RESPONSE: (b) (5)

33. Social welfare groups, organized under Section 501(c)(4) of the Tax Code, are

² https://www.washingtonpost.com/opinions/i-worked-in-the-justice-department-i-hope-its-lawyers-wont-give-trump-an-alibi/2019/01/10/9b53c662-1501-11e9-b6ad-9cfd62dbb0a8_story.html?utm_term=.b4a7e24ff5da

³ https://www.washingtonpost.com/politics/2019/01/21/president-trump-made-false-or-misleading-claims-his-first-two-years/?utm_term=.34e802aaa8b7

required to report political spending to the Federal Election Commission (FEC). Social welfare organizations are also required to file reports with the Internal Revenue Service (IRS), detailing the groups' actual or expected political activity.

- Question 15 on IRS Form 1024 (application for recognition of tax exemption) asks, "Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office . . . ?"
- Question 3 on IRS Form 990 (annual return of exempt organization) asks, "Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If 'Yes,' complete Schedule C, Part I."

Both IRS Forms 1024 and 990 are signed under penalty of perjury. Section 1001 of the criminal code, makes it a criminal offense to make "any materially false, fictitious or fraudulent statement or representation" in official business with the government; and Section 7206 of the Internal Revenue Code, makes it a crime to willfully make a false material statement on a tax document filed under penalty of perjury. In your view, if an organization files inconsistent statements regarding their political activity with the FEC and the IRS, can the group be liable under Section 1101 or 7206?

RESPONSE: (b) (5)

- a. Should the Department concern itself with such inconsistent statements of which the Department of Justice becomes aware? Could that inconsistency provide predication for further investigation?

RESPONSE: (b) (5)

34. Currently no jurisdiction in the United States requires shell companies to disclose their beneficial ownership. Terror organizations, drug cartels, human traffickers, and other criminal enterprises abuse this gap in incorporation law to establish shell companies designed to hide assets and launder money. At a February 2018 Judiciary hearing, the M. Kendall Day, the then-Acting Deputy Assistant Attorney General for the Criminal Division, testified, "The pervasive use of front companies, shell companies, nominees, or other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country's AML [anti-money laundering] regime." The law enforcement community, including the Fraternal Order of Police, Federal Law Enforcement Officers Association; National Association of Assistant U.S. Attorneys; and National District Attorneys Association, have all called on Congress to pass legislation to help law enforcement identify the beneficial owners behind these shell companies.

- a. Do you agree that allowing law enforcement to obtain the identities of the beneficial owners of shell companies would help law enforcement to uncover and dismantle criminal networks?

RESPONSE: (b) (5)

- b. In July 2018, Treasury Secretary Mnuchin told the House Financial Services committee that “We’ve got to figure out this beneficial ownership [issue] in the next six months.” The Trump administration, however, has yet to endorse any beneficial ownership legislation introduced in Congress and has not put forth a proposal of its own. Will you commit to working with Congress and other relevant executive branch departments on legislation to give law enforcement the tools needed to more effectively untangle the complex web of shell companies criminals use to hide assets and launder money in the United States?

RESPONSE: (b) (5)

- c. Under current law, banks are required to undertake due diligence to ensure that their customers are not laundering funds. No similar anti-money-laundering standards apply to the attorneys who help set up the shell companies integral to criminal enterprises. Do you support extending anti-money-laundering due diligence requirements to attorneys?

RESPONSE: (b) (5)

35. Please describe the nature of your involvement with the Federalist Society, including your participation in any public or private events or meetings.

RESPONSE: (b) (5)

36. Please describe the nature of your relationship with Leonard Leo, including any shared organizational affiliations beyond the Federalist Society.

RESPONSE: (b) (5)

37. Have you been involved in any way, formally or informally, with the selection, recommendation, or vetting of judicial nominees during the Trump administration, including Justice Kavanaugh? Please describe with specificity the nature of any such involvement, including the names of any judicial nominees on whose nominations you worked.

RESPONSE: (b) (5)

38. In 2017, the FBI concluded that white supremacists killed more Americans from 2000 to 2016 than “any other domestic extremist movement.” According to the FBI, law enforcement agencies reported that 7,175 hate crimes occurred in 2017, a 17 percent increase over the previous year. In a study titled “The Rise of Far-Right Extremism in

the United States,” The Center for Strategic & International Studies found that terror attacks by right-wing extremists rose from around a dozen attacks a year from 2012-2016 to 31 in 2017. Meanwhile, the Trump administration has cut funding to programs, particularly the Department of Homeland Security’s Office of Community Partnership, designed to combat extremism and prevent people from joining extremist groups in the first case.

- a. You stated in your testimony that we must have a “zero tolerance policy” for people who “violently attack others because of their differences.” Please elaborate on the steps you plan to take at DOJ to combat the rise of hate crimes and right-wing extremism.
- b. Is there value in using federal resources to prevent people from becoming radicalized?
- c. What will you do if you feel the Trump administration is not devoting enough attention or resources to combatting domestic terrorism and right-wing extremism?
- d. Would you support encouraging DOJ investigators and prosecutors to label all hate crimes meeting the federal definition of “domestic terrorism” so as to collect more accurate data about the number of violent hate crimes that occur around the country, particularly in states that do not have hate crimes laws?
- e. Will you commit to treating hate crimes that meet the definition of “domestic terrorism” as a top priority given recent trends?

RESPONSE: (b) (5)

39. As you are aware, Congress just passed—and the President just signed—the most sweeping criminal justice reform in decades. On both the sentencing and prison side, the FIRST STEP Act incorporates reforms that would seem to go against your previously stated policy views. Will you commit to implement the law faithfully and to let us know if you hit roadblocks or challenges?

RESPONSE: (b) (5)

40. As you know, in May 2017 Attorney General Sessions issued a memorandum on “Department Charging and Sentencing Policy” directing federal prosecutors to “charge and pursue the most serious, readily provable offense.” During your hearing, you told Senator Lee that you intended to continue that policy “unless someone tells me a good reason not to.”
 - a. Do you believe that the core policy of charging the most serious, readily provable offense promotes public safety? What data supports your response?

RESPONSE: (b) (5)

- b. Do you believe that the core policy of charging the most serious, readily provable offense leads to fair outcomes? What data supports your response?

RESPONSE: (b) (5)

- c. In a blog post about the Sessions charging policy, the Cato Institute opined that the most serious, readily provable offenses “are so rigid that they too often lead to injustice—especially in drug cases where the quantity of drugs can be the primary factor instead of a person’s culpability. Low-level mules get severe sentences for example driving narcotics from one city to another.” Would this be a “good reason not to” continue the policy?

RESPONSE: (b) (5)

- d. If you do intend to continue the Sessions charging policy, is it your intent that the policy apply to white collar, financial crimes as well as to drug-related and violent crimes?

RESPONSE: (b) (5)

41. Shortly before leaving office, Attorney General Sessions issued a memorandum sharply curtailing the use of consent decrees between the Justice Department and local governments. According to the memo, Sessions imposed three stringent requirements for the agreements: (1) Top political appointees must sign off on the deals, rather than the career lawyers who have done so in the past; (2) Department lawyers must present evidence of additional violations beyond unconstitutional behavior; and (3) the agreements must have a sunset date, rather than being in place until police or other law enforcement agencies have shown improvement.

- a. Is it your intent to continue the Sessions policy on consent decrees? Why or why not?

RESPONSE: (b) (5)

- b. If you intend to continue the Sessions policy, why is it good policy for political appointees rather than career prosecutors to sign off on these agreements?

RESPONSE: (b) (5)

- c. You told Senator Hirono that the notion that the Sessions policy made it “tougher” for DOJ to enter into consent decrees was her characterization of the policy. Based on the three new requirements, do you not agree that the Sessions policy makes it tougher for DOJ to enter into consent decrees?

RESPONSE: (b) (5)

42. In your April 2001 interview for the George H.W. Bush Oral History Project you indicated that the DOJ will/should defend the constitutionality of congressional enactments except when a statute impinges on executive prerogative.
- a. Do you still hold this belief? If so, what is an example of a statute that you feel “impinges on executive prerogative” that you therefore would not defend?

RESPONSE: (b) (5)

- b. What is your view of the Department of Justice’s decision not to defend the Affordable Care Act against the challenge brought by several states in federal district court in Texas?

RESPONSE: (b) (5)

43. Do you believe that voter impersonation is a widespread problem? If so, what is the empirical basis for that belief?

RESPONSE: (b) (5)

44. As Attorney General, in the aftermath of the *Shelby County v. Holder* decision, how specifically would you use the Department of Justice to protect racial and language minority voters from discriminatory voting laws? Can you provide an example of a case in which you believe Section 2 of the Voting Rights Act was used effectively?

RESPONSE: (b) (5)

45. In October, 2017, Attorney General Sessions issued a memo reversing federal government policy clarifying that discrimination against transgender people is sex discrimination and prohibited under federal law. The memo stated, among other things, that “Title VII’s prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity per se, including transgender status.” As recently as October, 2018, DOJ filed a brief in the Supreme Court arguing that Title VII of the Civil Rights Act of 1964 does not prohibit discrimination against transgender workers.

- a. Do you agree with Attorney General Sessions’s interpretation of Title VII? Why or why not?

RESPONSE: (b) (5)

- b. Should you be confirmed as Attorney General, would DOJ continue to take the position that Title VII does not prohibit discrimination against transgender employees?

RESPONSE: (b) (5)

48. In a 1992 speech to the “In Defense of Civilization” conference, you called for “God’s law” to be brought to the United States. Reports said that you “blamed secularism for virtually every contemporary societal problem.” You said that secularism caused the country’s “moral decline,” and said that secularism caused “soaring juvenile crime, widespread drug addiction,” and “skyrocketing rates of venereal disease.”

- a. About a quarter of American adults today are not religious. Do you still think that those Americans are responsible for virtually every contemporary societal problem? If not, what changed your mind?

RESPONSE: (b) (5)

- b. Do you still believe that secularism causes juvenile crime and venereal disease? If not, what changed your mind?

RESPONSE: (b) (5)

49. Given your stated views on the evils of secularism, what commitments will you make to ensure that non-religious career attorneys and staff at the Department are protected against disparate treatment on the basis of their secularism?

RESPONSE: (b) (5)

50. In 2017, Attorney General Sessions wrote a memo on “Principles of Religious Liberty,” which primarily addressed instances like those presented by the Supreme Court’s *Masterpiece Cakeshop* case, where someone wants an exemption to anti-discrimination civil rights laws because they are discriminating for religious reasons. You co-authored an article in the Washington Post that praised Sessions’s memo on religious liberty. Last year, Sessions created a “Religious Liberty Task Force” to carry out the memo, but little is known about who is on that task force and what exactly they are doing to implement the memo.

- a. If confirmed, what will you do with the Religious Liberty Task Force? If you decide to maintain the task force, will you commit making it transparent in terms of its membership and activities?

RESPONSE: (b) (5)

51. At your confirmation hearing, responding to questions about our anti-discrimination laws, you spoke about the need for accommodation to religious communities. How do you believe the law should strike a balance between the right of all people to be free from discrimination and the legitimate need to accommodate religious communities, to the extent those interests are sometimes in tension?

- a. Hypothetically, if a person had a sincerely held religious objection to hiring people of a certain race or gender, do you believe the First Amendment

protects their right not to hire people on the basis of race or gender? Do you believe it should?

RESPONSE: (b) (5)

52. In 2017, Attorney General Sessions issued a memorandum implementing a ban on the practice of third party settlements.⁴ All too often, marginalized and disenfranchised communities bear the brunt of environmental harms caused by violations of federal clean air and water laws. Supplemental Environmental Projects, or “SEPs” included in DOJ settlements with polluters, have proved to be valuable mechanisms to accomplish environmental justice in these communities.

- a. Will you commit to ending the policy at DOJ of banning third party settlements in environmental enforcement cases?

RESPONSE: (b) (5)

53. DOJ under Attorney General Sessions saw a 90% reduction in corporate penalties during the first year of the Trump Administration, from \$51.5 billion to \$4.9 billion.⁵

- a. Will you commit to investigate this dramatic drop-off in corporate fines for violations of federal law and commit to reversing these trends?

RESPONSE: (b) (5)

54. As was noted at your confirmation hearing, the DOJ under the Trump administration has flipped its prior litigation positions in a number of high profile cases, many in the civil rights and voting rights arena.

- a. Are you concerned about the effect these reversals might have on the DOJ’s institutional credibility before the courts and the American people?

RESPONSE: (b) (5)

- b. Did DOJ reverse any prior litigation positions during your previous tenure as Attorney General?

RESPONSE: (b) (5)

- c. If confirmed, what process will you use to determine whether the Department should reverse a prior litigation position?

RESPONSE: (b) (5)

⁴ <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-ends-third-party-settlement-practice>

⁵ Public Citizen 2018 report at 13 (see <https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf>).

55. In March 2017, Caterpillar Inc. announced that it had retained you and the law firm Kirkland & Ellis to bring a “fresh look” to the ongoing criminal investigation into the company’s tax practices. Your work for Caterpillar began just weeks after agents with the Internal Revenue Service, U.S. Department of Commerce, and Federal Deposit Insurance Corp. executed search warrants at Caterpillar’s then headquarters and other facilities to seize documents related to Caterpillar’s tax strategy and international parts business. This criminal investigation followed a 2014 Senate Permanent Subcommittee on Investigations report criticizing Caterpillar’s tax practices, which allow the U.S.- based company to allocate significant profits to a low-tax Swiss subsidiary. The IRS has charged Caterpillar over \$2 billion in back taxes and penalties related to this matter.

- a. Will you commit to recusing yourself from any matters relating to Caterpillar?
- b. While representing Caterpillar, did you take any formal or informal actions to challenge the basis for the search warrants executed by the government or to challenge the documents collected during the search?

RESPONSE: (b) (5)

56. If confirmed as Attorney General, will you commit to providing the resources necessary to pursue complex criminal tax abuse investigations and prosecutions?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR KLOBUCHAR

1. During the hearing, you committed to consulting career ethics attorneys at the Department of Justice about whether to recuse yourself from overseeing the Special Counsel's investigation, although you did not commit to following their advice.
 - a. Will you make public what the Department's ethics attorneys' recommendations are for any matter before the Department, including the Special Counsel's investigation?

RESPONSE: (b) (5)

- b. I asked whether attorneys at your law firm represented individuals or entities in connection with the Special Counsel's investigation. You told me that because you serve as Of Counsel at the firm, you would need to supplement your answer. Please do so here.

RESPONSE: (b) (5)

2. You have committed to make as much of the Special Counsel's report public as possible. Under 28 C.F.R. § 600.9(a)(3), the Attorney General must send a report to Congress documenting any instances where the Attorney General prohibited the Special Counsel from taking an action.
 - a. Will you allow the White House or the President's personal lawyers to view or make changes to this report?

RESPONSE: (b) (5)

- b. Would Congress be within its rights to make some or all of this report public if the Department declined to do so?

RESPONSE: (b) (5)

3. I asked you whether the Department of Justice, under your leadership, would ever jail reporters for doing their job. You referenced the Department's guidelines and responded that jail might be appropriate as a last resort. Under Attorney General Sessions, the Department initiated a process to revise the guidelines, which has not been finalized.
 - a. Do you believe that the guidelines need to be changed?

RESPONSE: (b) (5)

- b. The current guidelines require the Department to issue an annual report on all subpoenas issued or charges made against journalists. Will you commit to keeping this in place?

RESPONSE: (b) (5)

- c. Will you commit to keeping the Judiciary Committee informed of any proposed changes to the guidelines before they are finalized?

RESPONSE: (b) (5)

- 4. This Administration has reversed its positions in an unprecedented number of cases. I am concerned about the long-term effects of this on the Justice Department.

- a. Several career lawyers at the Department declined to sign the briefs in the Texas Affordable Care Act case. If you had been Attorney General, would you have directed the briefs to be filed over their objections?

RESPONSE: (b) (5)

- b. A former Office of Legal Counsel lawyer wrote an op-ed in *The Washington Post* in which she described her job as “fashioning a pretext, building an alibi” for the White House’s decisions. How will you restore morale among the Department’s career civil servants?

RESPONSE: (b) (5)

- 5. This Administration suggests that voter fraud is a major threat to the integrity of our elections, but a major *Washington Post* study found only 31 credible instances of voter fraud out of more than 1 billion votes cast over 14 years.

- a. Will you take an evidence-based approach to ensuring the integrity of our elections?

RESPONSE: (b) (5)

- b. Will you commit to enforcing Section 2 of the Voting Rights Act?

RESPONSE: (b) (5)

- 6. You and I had a lengthy talk about antitrust issues when we met, and I was glad to hear from you in our meeting that you are committed to renewed thinking about antitrust law.

- a. We have heard that the demands of merger enforcement have taken limited resources away from monopolization and other civil conduct cases. One of my bills, the Merger Enforcement Improvement Act, would see to it that the antitrust

agencies get the resources they need to tackle both mergers and monopolization cases. Can I count on your support in getting this bill passed and implemented?

RESPONSE: (b) (5)

- b. I am concerned about mergers that allow companies to unfairly lower prices that they pay, as buyer power among employers has been linked to stagnant wages. My bill, the Consolidation Prevention and Competition Promotion Act, would forbid these kinds of mergers under the Clayton Act. If you are confirmed, how will you approach the problems posed by monopsonies?

RESPONSE: (b) (5)

- c. I have expressed concern regarding the effectiveness of merger consent decrees in protecting competition and consumers. That is why my bill, the Merger Enforcement Improvements Act, would require parties to a consent decree to provide post-settlement data, so that the agencies can measure the effectiveness of their remedies and make improvements. Would post-settlement data be helpful in determining what types of merger remedies are effective and what types are not?

RESPONSE: (b) (5)

- d. It is clear that we are seeing trends toward increased vertical integration in certain industries, such as healthcare and video content. But after the challenge to the AT&T/Time Warner transaction was announced, a number of commentators characterized antitrust enforcement against a vertical merger as extremely rare, if not unprecedented. If you are confirmed, how will you evaluate the consequences of vertical integration in mergers?

RESPONSE: (b) (5)

- e. The vertical merger guidelines have not been revised for some time despite multiple calls for the Justice Department and FTC to update them and uncertainty as to the agencies' commitment to vertical merger enforcement. Will you commit to updating the vertical merger guidelines to reflect current Justice Department practices?

RESPONSE: (b) (5)

- f. Over the last decade, major online platforms have changed the lives of Americans, allowing them to find information, buy or sell products, and communicate with each other. At the same time, the growing dominance of these companies raises a host of potential antitrust issues, and the lack of competition among platforms appears to keep market forces from disciplining their approaches to consumer privacy. How will you assess the impact of technology platforms on competition?

RESPONSE: (b) (5)

- g. In the last two years, the European Commission has issued multi-billion dollar fines against Google for using its dominance in search to give advantages to other Google products and for using its strong position in Android-related markets to maintain its dominance in internet search. According to Assistant Attorney General Makan Delrahim, the European Union (EU) also uses the consumer welfare standard, so why are the levels of enforcement activity so different between the United States and the EU, and what steps will you take to reestablish U.S. leadership in antitrust law?

RESPONSE: (b) (5)

- h. Prescription drug costs impose a heavy burden on consumers and are projected to comprise an increasing proportion of health care costs in the years to come. Curbing pay-for-delay settlements is one way to reduce prescription drug costs, and Senator Grassley and I are leading legislation to help put a stop to these anti-consumer deals for years. If you are confirmed, how will you approach the role of antitrust law in reducing high prescription drug costs?

RESPONSE: (b) (5)

- i. Antitrust scholars have noted that the threat of private treble damages has driven the courts to constrain the Sherman Act's ability to address anticompetitive conduct by a single firm—which does not just affect private litigants, but government enforcement as well. Will you commit to reevaluating the positions that the Justice Department takes in private enforcement actions in order to expand the scope of enforcement of the antitrust laws?

RESPONSE: (b) (5)

- 7. In a November 1993 article in *The Banker*, you argued that the downsides of prosecuting corporations for fraud outweighed the upsides.
 - a. If you are confirmed, will you commit to prosecuting white collar and corporate criminals just as you would street criminals?

RESPONSE: (b) (5)

- b. At a 2004 conference held by the Federalist Society, you said prosecutors in white-collar cases were young and inexperienced, and overreached in corporate investigations. If you are confirmed, those young prosecutors will be looking to you for leadership. Do you stand by what you said in 2004?

RESPONSE: (b) (5)

8. According to a January 13, 2019 report in *The Washington Post*, the President has destroyed notes from at least one of his meetings with Russian President Vladimir Putin.

- a. Does the Presidential Records Act apply to the President?

RESPONSE: (b) (5)

- b. Do you believe that the Presidential Records Act is constitutional?

RESPONSE: (b) (5)

9. Attorney General Jeff Sessions narrowed the grounds for asylum claims for victims of private crime. His opinion in *Matter of A-B-* makes very difficult for victims of domestic abuse and gang violence to be granted asylum.

- a. Do you agree with Attorney General Sessions's decision in *Matter of A-B-*?

RESPONSE: (b) (5)

- b. Asylum statutes dictate that applicants seeking asylum must show that either their "race, religion, nationality, membership in a particular social group, or political opinion" is "at least one of the central reasons for the persecution" of the applicant. Do you interpret the statute's requirement of "membership in a particular social group" to be independent of the requirement that an applicant demonstrate persecution?

RESPONSE: (b) (5)

10. Minnesota has a large Liberian refugee population. In 2007, President George W. Bush directed that Deferred Enforced Departure (DED) be provided for 18 months to certain Liberians whose Temporary Protected Status (TPS) was expiring. Every President after George Bush has extended DED for Liberians since the initial 18 month period was set to expire. Last March, President Trump directed Secretary Nielson to begin winding down DED status. On March 31, 2019, DED ends for Liberians.

- a. Do you agree with President Trump's decision to end DED status?

RESPONSE: (b) (5)

- b. What steps will you take to protect Liberians with DED status from being deported?

RESPONSE: (b) (5)

11. One of my highest priorities has been working to combat the scourge of human trafficking. I work closely with members of the Judiciary Committee, including Senator Cornyn, to support survivors of human trafficking and provide resources to federal, state, and local law enforcement officials. We recently passed bipartisan legislation called the Abolish Human Trafficking Act.

- a. If confirmed as Attorney General, what will be your priorities in combating trafficking?

RESPONSE: (b) (5)

12. Congress will need to continue working with the Justice Department and local law enforcement officers combat the opioid epidemic.

- a. If confirmed as Attorney General, what steps will you take to combat the opioid epidemic?

RESPONSE: (b) (5)

- b. How do you plan to work with local law enforcement to combat the opioid epidemic?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR COONS

1. At your nomination hearing, you agreed to seek the advice of career ethics officials regarding whether you should recuse from the Special Counsel investigation. You testified that you did not think you would have an objection to (1) notifying the Senate Judiciary Committee once you receive the ethics officials' guidance, (2) telling the Committee what that guidance was, and (3) explaining whether or not you disagree with it. Now that you have had an opportunity to consult any applicable rules, will you agree to (1) notify this Committee once you receive the career ethics officials' guidance on recusal from the Special Counsel investigation, (2) inform us of the advice that you received from these career ethics officials, and (3) explain why you agree or disagree with it? If you contend that these notifications are not permitted, please cite the applicable rule.

RESPONSE: (b) (5)

2. At your nomination hearing, you testified that you would share as much as possible of Special Counsel Mueller's report "consistent with the regulations and the law."
 - a. Which regulations and laws do you think may prevent you from sharing the report in its entirety?

RESPONSE: (b) (5)

- b. If Special Counsel Mueller provides you with his report, and it contains information that you choose not to include in the Attorney General's report that is released to the public, would you provide a log of the information withheld and the rule, regulation, or privilege justifying that it be withheld?

RESPONSE: (b) (5)

3. If Donald Trump fires Special Counsel Mueller or orders you to fire Special Counsel Mueller without good cause, would you resign? Please answer yes or no.
 - a. If you would not resign, what would you do?

RESPONSE: (b) (5)

- b. Will you agree to notify the Chairman and Ranking Member of the Senate Judiciary Committee if you believe Special Counsel Mueller has been removed without good cause? Please answer yes or no.

RESPONSE: (b) (5)

- c. If you learn that the White House is attempting to interfere with the investigation, will you report that information to Special Counsel Mueller and inform Congress? Please provide examples of what, in your view, would constitute inappropriate interference.

RESPONSE: (b) (5)

4. If the President directed the FBI to stop investigating his National Security Advisor in order to hide the administration's Russia connections from the American people, is that illegal?

RESPONSE: (b) (5)

5. You were Attorney General when President Bush pardoned six administration officials charged with crimes in the Iran-Contra scandal, and you have said that you encouraged the President to issue those pardons. The Iran-Contra Independent Counsel called these pardons a "cover-up." He said they "undermine[] the principle that no man is above the law" and "demonstrate[] that powerful people with powerful allies can commit serious crimes in high office – deliberately abusing the public trust without consequence."
 - a. What factors would you consider when advising the President on whether to issue a pardon?
 - b. You testified that if a President issues a pardon as a quid pro quo to prevent incriminating testimony, that would be a crime. How should a President be held accountable for such a crime?
 - c. Would it be permissible for President Trump to pardon Michael Flynn, Paul Manafort, or Michael Cohen if he did so to cover up his own criminal activity?
 - d. Would it be permissible for President Trump to pardon himself?

RESPONSE: (b) (5)

6. Chairman Graham, Senator Tillis, Senator Booker, and I have introduced the Special Counsel Independence and Integrity Act (S.71), which would codify the good-cause restriction on the Special Counsel's removal and make it clear that the Special Counsel can be reinstated if he is removed improperly. If this bill passes, would you commit to complying with that law?

RESPONSE: (b) (5)

7. When you were nominated to lead the Office of Legal Counsel, you told the Senate Judiciary Committee that you “fully accepted” the Supreme Court’s ruling in *Morrison v. Olson*, 487 U.S. 654 (1988). Do you still accept the *Morrison* decision as good law?

RESPONSE: (b) (5)

8. Deputy Attorney General Rosenstein has said publicly that your June 2018 memorandum on obstruction of justice “had no impact” on the Special Counsel investigation. When I asked if you would order the Special Counsel’s office to accept and follow the reasoning in your memorandum, you testified that you would “try to work it out with Bob Mueller” and “unless something violates the established practice of the department, [you] would have no ability to overrule that.”
- a. Please confirm that if Special Counsel Mueller’s theory of obstruction does not violate an established practice of the Department of Justice, you will not overrule his interpretation of the law.
- b. Did any of the attorneys to whom you transmitted your June 2018 obstruction of justice memorandum respond to you? If so, please provide their responses.

RESPONSE: (b) (5)

9. The same day that you sent your June 2018 obstruction of justice memorandum to Deputy Attorney General Rosenstein, former Attorney General Dick Thornburgh, who was your boss when you were the Deputy Attorney General, authored an op-ed published in the *Washington Post*, stating in part, “Mueller is the right person to investigate Russia’s apparent assault on our democracy. . . . Mueller must put all applicable evidence before an impartial grand jury that will decide whether to bring charges. We must let him do his job.”
- a. Have you discussed your obstruction of justice memorandum with former Attorney General Thornburgh? If so, please describe this discussion.
- b. Have you discussed former Attorney General Thornburgh’s op-ed with him? If so, please describe this discussion.

RESPONSE: (b) (5)

10. In the 26 years since you served as Attorney General, have you sent any other legal memoranda to Department of Justice leadership criticizing an investigation? If so, please provide a list of the investigations that these memoranda addressed and estimates of when the memoranda were transmitted.

RESPONSE: (b) (5)

11. What is the remedy if the President violates his constitutional duty to faithfully execute the laws or violates an obstruction statute?

RESPONSE: (b) (5)

12. During the hearing on his nomination to be Attorney General, then-Senator Sessions stated that he “did not have communications with the Russians,” but facts about meetings that he had with the Russian Ambassador later became public. Have you ever had any contact and/or communications with anyone from the Russian government? If so, please list these contacts and/or communications.

RESPONSE: (b) (5)

13. An op-ed that you joined in November, entitled “We are former attorneys general. We salute Jeff Sessions,” specifically praised Attorney General Sessions for changing the Department of Justice’s interpretation of Title VII to exclude protections for transgender individuals. Do you support interpreting Title VII to protect the LGBT individuals?

RESPONSE: (b) (5)

14. In a 1995 law review article, you criticized a D.C. law that required Georgetown University to “treat homosexual activist groups like any other student group.” Do you oppose laws that ensure equal treatment for LGBT student groups?

RESPONSE: (b) (5)

15. At your nomination hearing, you testified that you are “against discrimination against anyone because of some status,” including “their gender or their sexual orientation.” If you are confirmed, will the Department of Justice file amicus briefs defending discrimination against LGBT individuals, as it did in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* and *Zarda v. Altitude Express*?

RESPONSE: (b) (5)

16. In a speech that you gave as Attorney General, you said that public schools had suffered a “moral lobotomy” based on “extremist notions of separation of church and state.” However, you testified at your nomination hearing that you “believe in the separation of church and state.” Do you think that the Constitution permits public schools to endorse a particular religious view?

RESPONSE: (b) (5)

17. You authored an op-ed that was published in the *Washington Post* claiming that President Trump’s first travel ban was legal and that it did not discriminate against Muslims. Do you still contend that there were “no plausible grounds for disputing the order’s lawfulness,”

even though over a dozen judges found the order was unlawful?

RESPONSE: (b) (5)

18. You testified at your nomination hearing that you are concerned about “the willingness of some district court judges to wade into matters of national security where, in the past, courts would not have presumed to be enjoining those kinds of things,” specifically citing the travel ban. If a President issues a discriminatory executive order while claiming a justification of national security, do you agree that it is the responsibility of a court evaluating a challenge to that executive order to review its lawfulness and strike down the executive order if the court finds it violates the Constitution or a statute?

RESPONSE: (b) (5)

19. There are 67,000 Americans who are dying every year from drug overdoses. You once said “. . . I don’t consider it an unjust sentence to put a [drug] courier . . . in prison for five years. The punishment fits the crime.” We cannot incarcerate our way out of the opioid crisis. How would you use the resources of the Department of Justice to help those suffering from addiction get the help they need?

RESPONSE: (b) (5)

20. At your nomination hearing, you testified that you did not agree with the proffered percentage of nonviolent drug offenders within the federal prison population, stating that “sometimes the most readily provable charge is their drug-trafficking offenses rather than proving culpability of the whole gang for murder.” Is it your view that many individuals in prison for nonviolent drug offenses have committed violent crimes? If so, please provide the evidence you rely on in support of this contention.

RESPONSE: (b) (5)

21. Why did you sign a letter opposing passage of the Sentencing Reform and Corrections Act in 2015? Please explain the basis for your opposition to bipartisan sentencing reform.

RESPONSE: (b) (5)

22. If confirmed, will you reevaluate the Department of Justice’s position to refuse to defend the Affordable Care Act and, in the process of doing so, consult with career officials who disagreed with the Department’s position not to defend the law?

RESPONSE: (b) (5)

23. Last Congress, I was grateful to join with Senator Toomey to introduce the NICS Denial Notification Act (S.2492) – a bipartisan, commonsense bill that ensures that state and federal law enforcement are working together to prevent those who should not be able to

buy a gun from getting one. However, these “lie and try” cases are rarely prosecuted at the federal level. Will you work with me on this bill to ensure that state law enforcement has the information to prosecute violations of “lie and try” laws?

RESPONSE: (b) (5)

24. Studies show that five percent of gun dealers sell 90 percent of guns that are subsequently used in criminal activity. How would you direct the Department of Justice to instruct the Bureau of Alcohol, Tobacco, Firearms and Explosives to crack down on dealers that funnel thousands of crime guns to city streets?

RESPONSE: (b) (5)

25. Individuals are being jailed throughout the country when they are unable to pay a variety of court fines and fees. There is often little or no attempt to learn whether these individuals can afford to pay the imposed fines and fees or to work out alternatives to incarceration.

- a. Under your leadership, would the Department of Justice work to end this practice?

RESPONSE: (b) (5)

- b. What is your position on the practice of imposing unaffordable money bail, which results in the pretrial incarceration of the poor who cannot afford to pay?

RESPONSE: (b) (5)

26. What would you do to ensure vigorous enforcement of the Ethics in Government Act, bribery and honest services laws, and anti-nepotism laws?

RESPONSE: (b) (5)

27. The total volume of worldwide piracy in counterfeit products is estimated to be 2.5% of world trade (USD \$461 billion). Counterfeit products such as fake pharmaceutical drugs or faulty electronics can cause direct physical harm to Americans, and the profits from these illicit sales often go directly to the coffers of organized crime. How would you use Department of Justice resources to address this growing threat?

RESPONSE: (b) (5)

28. The Department of Justice has made substantial efforts to combat trade secret theft by foreign nationals. In 2009, only 45 percent of federal trade secret cases were against foreign companies; this number increased to over 83 percent by 2015.

- a. Would you prioritize enforcement actions to combat trade secret theft by foreign

nationals?

RESPONSE: (b) (5)

- b. How do you plan to continue the Department of Justice's efforts to successfully target criminal trade secret theft?

RESPONSE: (b) (5)

29. The United States is currently facing a massive cybercrime wave that the White House has estimated costs more than \$57 billion annually to the U.S. economy. However, a recent study using the Justice Department's own data found that only an estimated three in 1,000 cyberattacks in this country ever result in an arrest.

- a. Do you agree that we have to narrow this enforcement gap?

RESPONSE: (b) (5)

- b. Although it may be difficult to successfully extradite and prosecute individuals located in countries like China, there have been a number of cases in which the U.S. has had success in arresting and extraditing cyber-attackers from foreign countries. Do you agree that we should be more aggressive in using existing laws against cyber- criminals located abroad, such as in China?

RESPONSE: (b) (5)

- c. Will you commit to ensuring that the Computer Crime and Intellectual Property Section and the Office of International Affairs are fully staffed, should you be confirmed?

RESPONSE: (b) (5)

- d. What actions would the Department take under your leadership to strengthen private sector cooperation in cybercrime investigations?

RESPONSE: (b) (5)

30. The CLOUD Act, a bill that I worked hard on with Chairman Graham and Senator Whitehouse, became law last year. This legislation authorizes the U.S. government to enter into agreements with foreign partners to facilitate law enforcement access to electronic communications. No such agreements have been entered into yet. Will you explore using these agreements to further leverage cooperation on cybercrime investigations?

RESPONSE: (b) (5)

31. You testified that protecting the integrity of elections would be one of your top priorities as Attorney General.

- a. Do you agree that certain photo ID laws can disenfranchise otherwise eligible voters and disproportionately and unreasonably burden African-American and Latino voters?

RESPONSE: (b) (5)

- b. If confirmed, will you work with Congress to restore preclearance review under the Voting Rights Act by helping to develop a coverage formula that the Department of Justice would support?

RESPONSE: (b) (5)

32. You testified at your nomination hearing that it might be appropriate to prosecute a journalist if that journalist “has run through a red flag or something like that, knows that they’re putting out stuff that will hurt the country.” Please explain how you would evaluate if a journalist has “run through a red flag” or is putting out information that “will hurt the country.”

RESPONSE: (b) (5)

33. While you were Attorney General, you were involved in litigation related to the detention of HIV-positive Haitians in Guantanamo Bay.

- a. In the litigation, the Justice Department represented to the Supreme Court that anyone who was identified as having a credible fear of persecution upon return to Haiti was to be brought to the United States for an asylum hearing. After making that representation, the administration changed its policy to hold HIV-positive Haitians, even those who had already been identified as having a credible fear of persecution, in Guantanamo Bay. Do you dispute that the Justice Department supported detentions of HIV-positive Haitians in Guantanamo Bay after representing to the Supreme Court that HIV-positive Haitians with a credible fear of persecution would be brought to the U.S. for an asylum hearing?

RESPONSE: (b) (5)

- b. In that same litigation, the Justice Department represented to the Supreme Court that tens of thousands of Haitians wanted to flee violence in their home country, drawn by the “magnet effect” of a judicial decision issued by the Eastern District of New York. There was no credible evidence of this so-called magnet effect. Do you regret that the Justice Department made this unsubstantiated claim?

RESPONSE: (b) (5)

34. At your nomination hearing, you testified that you had not looked at the issue of birthright citizenship. Please review this article by John Yoo, entitled “Settled law: Birthright citizenship and the 14th Amendment,” available at <https://www.aei.org/publication/settled-law-birthright-citizenship-and-the-14th-amendment/>.

- a. Do you agree that the text of the Fourteenth Amendment guarantees birthright citizenship?

RESPONSE: (b) (5)

- b. Do you support the revocation or modification of the Fourteenth Amendment’s constitutional guarantee of birthright citizenship?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR BLUMENTHAL

1. In June 2018, the FCC's plan to abdicate its authority over net neutrality came into effect. While the FCC has signed a memorandum of understanding with the FTC over unfair and deceptive practices by internet service providers, these actions have left consumers without clear rules and effective enforcement over net neutrality violations.

While the FCC and FTC are primarily responsible for oversight over internet service providers, the Department of Justice has interceded in cases regarding net neutrality in the past. Most recently, the California Attorney General reached a temporary agreement with the Department of Justice to delay their law from taking effect until federal lawsuits over the FCC's rollback of net neutrality are resolved.

When you were in private practice, you were significantly involved with telecommunications companies and other interests that were implicated in net neutrality. Most significantly, you served as General Counsel and Executive Vice President of Verizon Communications for eight years, during which you argued against net neutrality based on concerns over its impact on Verizon's revenue. For example, you reportedly stated that net neutrality regulations might prevent broadband providers like Verizon from earning "an adequate return." You also recently served on the board of Time Warner, which is seeking to merge with AT&T. Both affiliations create the appearance of potential conflicts of interest with regard to oversight of internet service providers and enforcement of net neutrality.

- a. At least four states have passed their own net neutrality laws since the FCC abdicated its responsibility and still more are considering taking action to protect their residents. Do you intend to continue to pursue litigation to prevent states from enforcing their own laws to protect net neutrality? Under what specific conditions will the Department of Justice intervene against states that regulate discriminatory conduct within their state?

RESPONSE: (b) (5)

- b. Verizon and other internet service providers originally sued California to prevent the implementation of their net neutrality protections, and have been parties to most fights over the open internet. Considering the potential appearance of conflicts of interest based on your previous professional affiliations and statements on net neutrality, will you commit to recuse yourself from any cases that involve the enforcement or defense any net neutrality laws?

RESPONSE: (b) (5)

- c. Given concerns over the appearance of conflicts of interest, will you recuse yourself from any cases that involve specific claims of discriminatory conduct by Verizon that may come before the Department of Justice? Will you recuse yourself from any cases that involve specific claims of discriminatory conduct by other internet service providers?

RESPONSE: (b) (5)

2. The Music Modernization Act was the result of years of bipartisan work by many members of the Judiciary Committee. The Department of Justice is currently conducting a sweeping review of 1,300 consent decrees, including the ASCAP and BMI consent decrees. These decrees play a critical role in allowing Americans to hear their favorite songs. I am concerned that terminating the ASCAP and BMI consent decrees could undermine the Music Modernization Act and permit the accumulation and abuse of market power.
 - a. Can you commit that the Department of Justice will work with Congress to develop an alternative framework prior to any action to terminate or modify the ASCAP and BMI consent decrees?

RESPONSE: (b) (5)

3. The Federal Correctional Institution in Danbury, Connecticut is home to over 1,000 federal inmates. It hosts important education and literacy programs, including some programs that bring in students from outside the institution to study with students housed inside the institution. Educational programs such as these are critical to restoring fairness to our criminal justice system and preparing inmates to contribute to society once have finished serving their time.
 - a. Do you agree with me that education and literacy programs are important parts restoring fairness and opportunity to our criminal justice system?

RESPONSE: (b) (5)

- b. What steps will you take as Attorney General to ensure that programs like the ones at the Federal Correctional Institution in Danbury are provided with the necessary resources?

RESPONSE: (b) (5)

- c. What steps will you take to expand successful prison education programs on a nationwide basis?

RESPONSE: (b) (5)

- d. Do you support restoring Pell grant funding to people in prison? Please explain the reasoning behind your position.

RESPONSE: (b) (5)

4. During your confirmation hearing I asked you if you maintained the position you expressed in 1991, that *Roe v. Wade* should be overruled. You responded:

“I said in 1991 that I thought as an original matter it had been wrongly decided, and that was, what, within 18 years of its decision? Now it's been 46 years, and the department has stopped, under Republican administration, stopped as a routine matter asking that it be overruled, and I don't see that being turned--you know, I don't see that being resumed.”

- a. Are you suggesting that you will not direct the Department of Justice to advocate to overturn *Roe*, or that it is merely unlikely that you will issue such an order?

RESPONSE: (b) (5)

- b. In your answer at the hearing you indicated that proximity in time to a Supreme Court ruling determines when you respect a precedent. In your opinion, when between 18 and 46 years does the principle of *stare decisis* attach?

RESPONSE: (b) (5)

- c. How do you determine when to give deference to a precedent?

RESPONSE: (b) (5)

- d. Does societal reliance on a precedent matter for *stare decisis* considerations?

RESPONSE: (b) (5)

5. As you know, American student loan borrowers now collectively owe more than \$1.5 trillion in student debt. The U.S. Department of Education relies on a number of large private-sector financial services firms to manage accounts and collect payments for more than \$1.2 trillion dollars of this debt. These firms have been the target of investigations and litigation by a range of state law enforcement agencies and regulators, alleging widespread abuses. This led Connecticut to pass the first comprehensive consumer protections in this area.

In the face of mounting litigation, beginning in 2017, the United States adopted the new legal position that it was never the government's expectation that these firms comply with state consumer law, including state prohibitions against unfair and deceptive practices,

because these laws were preempted by federal law. To this end, in early 2018, the U.S. Department of Justice took the extraordinary step of filing a "statement of interest" in a lawsuit brought by the Massachusetts Attorney General related to one company's alleged mishandling of the federal Public Service Loan Forgiveness program in which DOJ urged a state trial court judge to side with the student loan company over that state's top law enforcement official. In late 2018, DOJ filed a second "statement of interest" in a federal trial court supporting affirmative litigation brought by a student loan industry trade association, which opposed an effort by the District of Columbia to empower its banking department to oversee the practices at these firms. In both instances, the United States departed from its long-held position supporting federalism and states' historic police powers in the student loan market-- a position that spanned administrations of both parties-- to side with the student loan industry.

- a. Will you commit to restoring the past position of the DOJ and refraining from filing further actions opposing state consumer protection litigation in the student loan market?

RESPONSE: CIV

6. In recent years, Congressional investigations and leaked financial documents (i.e. Panama and Paradise Papers) have shown the extent to which the wealthiest citizens and corporations around the world—including the United States—use sophisticated financial strategies to avoid and evade taxes. Some of these moves are illegal, depriving the federal government of revenue and preventing the wealthiest from paying their fair share in the process.
 - a. Will you commit to making the full, fair, and consistent enforcement of tax laws a priority of the department during your tenure?

RESPONSE: TAX

7. Former White House Chief of Staff John Kelly recently stated that Attorney General Jeff Sessions “surprised” the Administration when he instituted a zero-tolerance policy that led to the family separation crisis on the border.
 - a. Can you commit to me that you will never support a policy that leads to mass family separation?

RESPONSE: OLP

8. President Trump recently issued a Presidential Proclamation barring certain individuals from receiving asylum. This policy could result in deporting asylum seekers back to their death. In addition to being needlessly cruel, this Proclamation is illegal under our laws and under international law. For this reason, a federal judge has already issued a temporary restraining order blocking it from going into effect. A federal appeals court upheld this temporary restraining order. I have previously written to President Trump demanding that he revoke this unlawful Proclamation rather than continuing to fight a losing battle in

court. So far, he has not done so.

- a. INA § 208(a)(1) is clear on this question. It says that any individual who arrives in the United States, “*whether or not at a designated port of arrival*,” may apply for asylum. Can you please explain how President Trump’s Proclamation is legal?

RESPONSE: (b) (5)

- b. Will you commit to advising the president to rescind this proclamation?

RESPONSE: (b) (5)

9. In 1990, you put forward an argument that Congress had very limited ability to control how the Executive spends congressionally appropriated funds. You stated – quote – “there may be an argument that if the president finds no appropriated funds within a given category to conduct activity, but there is a lot of money sitting somewhere else in another category — and both categories are within his constitutional purview — he may be able to use those funds.” In these remarks, you looked for a source of constitutional authority for Congress to control Executive spending, but you weren’t able to find one.

- a. Do you believe that Congress has constitutional authority to limit or control the Executive’s spending?

RESPONSE: (b) (5)

- b. In your remarks in 1990, you asked a simple question regarding Congress’s appropriations power: “What is the source of the power to allocate only a set amount of money to the State Department and to restrict the money for that activity alone?” I would like you to answer your own question.

RESPONSE: (b) (5)

10. Late last year, I wrote to the Department of Justice regarding Amazon’s use of most favored nation clauses in its contracts with third-party sellers on its site. I am deeply concerned that these hidden clauses are artificially raising prices on goods that millions of consumers buy every year. Amazon’s most favored nation clauses prevent sellers operating on its site from selling their goods at lower rates on other online marketplaces. This means that third-party merchants who sell on online marketplaces with lower transaction fees cannot pass on these savings to consumers. Relatedly, e-commerce sites that want to compete with Amazon to attract sellers will have trouble doing so by charging third-party sellers lower fees, given that third-party sellers could not pass these savings on to consumers. As a result, most favored nation clauses can also act as a barrier to entry for competitors. Roughly, five years ago, UK and German antitrust regulators opened an investigation into Amazon’s most favored nation clauses – and Amazon announced it

would stop enforcing these most favored nation clauses in Europe. However, it continues to enforce them here in the United States.

- a. Do you agree that Amazon's use of most-favored nation clauses in its contracts with third party sellers on its site could raise competition concerns?

RESPONSE: (b) (5)

- b. Would you commit to investigating Amazon's use of most-favored nation clauses in its contracts with third-party sellers on its site?

RESPONSE: (b) (5)

11. Corporate consolidation does not only threaten consumers; it threatens workers. At a hearing last October, I asked Assistant Attorney General Delrahim to provide an example of the last time labor market considerations were cited as the basis for rejecting a merger. Mr. Delrahim has still not provided a single example.

- a. Do you believe that labor market considerations are relevant to merger review?

RESPONSE: (b) (5)

- b. Can you commit to me that in every merger where the Department of Justice makes a second request, it will include a request for data related to labor market considerations?

RESPONSE: (b) (5)

12. I am deeply concerned about the growth of non-compete clauses, which block employees from switching to another employer in the same sector for a certain period of time. These clauses weaken workers' bargaining power once they are in the job, because workers often cannot credibly threaten to leave if their employer refuses to give them a raise or imposes poor working conditions. According to the Economic Policy Institute, roughly 30 million workers – including one in six workers without a college degree – are now covered by non-compete clauses. Just this past December, President Trump's administration released a report indicating that non-compete clauses can be harmful in particular contexts, such as the healthcare industry.

- a. Do you believe that non-compete clauses pose a threat to American workers?

RESPONSE: (b) (5)

- b. What action do you intend to take regarding non-compete clauses?

RESPONSE: (b) (5)

13. Last month, we learned that Facebook has been selling more of users' personal data than previously disclosed. For example, it allowed Netflix and Spotify to read Facebook users' private messages. It is unconscionable and unacceptable that a company is able to act with such disregard for the privacy rights of its users. One reason that Facebook is able to get away with it is that they hold such a powerful market position. This allows them to impose poor privacy conditions on their users.

There is growing evidence that Facebook is willing to go to extreme lengths to protect its market power. Recently, the UK Parliament released documents showing Facebook's ruthless attempts to shut down competitors. In 2013, Facebook was concerned about competition from Vine. A Facebook executive asked Mark Zuckerberg whether he could target Vine by shutting off Vine users' ability to find their friends via Facebook. Mr. Zuckerberg's response: "Yup, go for it."

- a. Do you believe this sort of action could constitute anticompetitive conduct?

RESPONSE: (b) (5)

14. When Americans use Google to search for products, the top result should be the one that best answers users' queries – not the result that is most profitable to Google. But there is growing concern that this is not the case. Just over a year ago, the European Union concluded that Google has been manipulating search results to favor its own comparison shopping service. Now, the European Union is reportedly investigating whether Google is unfairly demoting local competitors in its search results.

- a. Do you believe that there is sufficient evidence for the Department of Justice to act?

RESPONSE: (b) (5)

15. In a 2017 article, you wrote, "through legislative action, litigation, or judicial interpretation, secularists continually seek to eliminate laws that reflect traditional moral norms." According to your piece, secularists were attempting to, "establish moral relativism as the new orthodoxy" and in the process producing an explosion of crime, drugs, and venereal disease.

As an example of this trend, you discuss laws that, "seek to ratify, or put on an equal plane, conduct that previously was considered immoral. For example, "laws are proposed that treat a cohabitating couple exactly as one would a married couple. Landlords cannot make the distinction, and must rent to the former just as they would to the latter."

The implications of your statement for same-sex couples are troubling. At that time you wrote those words, same-sex couples were not allowed to get married. So, if landlords at

that time were allowed to discriminate against unmarried couples, they would have been allowed to refuse to rent to any same-sex couple, essentially forcing millions of Americans to choose between living where they want and living with the person they love.

- a. Do you believe landlords should be able to discriminate against unmarried couples?

RESPONSE: (b) (5)

- b. Do you believe landlords should be able to discriminate against gay and lesbian Americans?

RESPONSE: (b) (5)

- c. If landlords can discriminate based on moral condemnation of unmarried couples and gay people, could a landlord refuse to rent to a Jew because he has a moral objection to that faith? If landlords should be allowed to express their moral beliefs by discriminating against groups they consider morally repugnant, where does that stop?

RESPONSE: (b) (5)

Another example of this trend you highlighted was, “the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like any other student groups.” You argued that, “This kind of law dissolves any form of moral consensus in society.”

You argued that the law undermined a “moral consensus.” But D.C.’s law was passed by the city’s elected officials. My understanding is that it is broadly popular in the city, and I suspect it is broadly popular on Georgetown’s campus as well. If Georgetown were allowed to discriminate against LGBT organizations, it would be rejecting a moral consensus, not embracing one.

- d. In your view, is there a “moral consensus” against gay and lesbian student groups?

RESPONSE: (b) (5)

- e. What did you mean when you suggested that protections against discrimination “dissolve[] any form of moral consensus in society”?

RESPONSE: (b) (5)

- 16. One of the major achievements of the last century is the recognition that racial segregation is a great moral and legal wrong. The Supreme Court recognized this truth in one of its most esteemed decisions, *Brown v. Board of Education*. I would hope that, in 2019, the

correctness of the *Brown* decision cannot be in dispute.

Yet here we are, two years into the Trump Administration and judicial nominee after judicial nominee has come before this committee firmly and repeatedly declining to say that they believe *Brown* was correctly decided. If confirmed as Attorney General, you will oversee the Office of Legal Policy. Part of your duties will be to advise the president on judicial nominations, so I ask you this:

- a. Do you believe *Brown v. Board of Education* was correctly decided?

RESPONSE: (b) (5)

- b. Will you commit to only recommending for nomination individuals who believe *Brown* was correctly decided?

RESPONSE: (b) (5)

17. The 14th Amendment states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States.” President Trump claims that “the 14th Amendment is very questionable as to whether or not somebody can come over and have a baby and immediately that baby is a citizen.”

- a. Do you agree with President Trump?

RESPONSE: (b) (5)

- b. Can the president eliminate birthright citizenship by executive order?

RESPONSE: (b) (5)

18. In a 2001 interview with the Miller Center at the University of Virginia, you discussed how you prepared to advise President George H.W. Bush to deploy the army to address the Rodney King riots in Los Angeles. You said that, “basically the President has to issue a proclamation telling people to cease and desist and go to their homes. . . And then if they don’t cease and desist, you’re allowed to use regular army.” This seems like remarkably cavalier position on the use of the American military against the American people.

- a. As you know, President Trump has expressed a willingness and desire to invoke national emergency powers to build a wall on the southern border. Would you advise him to do so?

RESPONSE: (b) (5)

- b. What factors would you consider before advising the president to declare a

national emergency? What do you think constitutes a national emergency?

RESPONSE: (b) (5)

- c. In your opinion, what limits – if any – are there to the president’s use of the military in domestic matters?

RESPONSE: (b) (5)

- 19. Just months before the 1992 presidential election, several employees of the State Department — at the direction of the Assistant Secretary of State for Consular Affairs — searched a National Archives warehouse for then-candidate Bill Clinton’s passport files. According to the State Department Inspector General, the search was conducted “in the hope of turning up damaging information about Clinton that would help President Bush’s reelection campaign” — namely, “whether Clinton had ever written a letter at the time of the Vietnam War renouncing or considering renouncing his U.S. citizenship.”

In a 2001 interview, you said you were still bitter about this investigation. Specifically, you said, “the career people in the public integrity section had some kind of wacky theory, a very broad theory that if the search was done for a political reason, it was improper.” You went on to say that you believe that, “if an executive official has the power to open a file and look in a file, it’s not illegal that he may have a political motivation in doing so.”

- a. Do you stand by your statement?
- b. Is it your view that law enforcement is free to investigate people to gather political intelligence for a campaign?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR HIRONO

1. At your hearing you both told Senator Graham that you don't believe Robert Mueller would be involved in a "witch hunt," and expressed to me that you had sympathy for Donald Trump's calling it that.

You said, "the President is one that . . . has denied that there was any collusion and has been steadfast in that. . . . But I think it is understandable that if someone felt they were falsely accused, they would view an investigation as something like a witch hunt, where someone like you or me who does not know the facts, you know, might not use that term."

If you don't believe that Mr. Mueller would conduct an unfounded investigation, and if you know about the numbers of indictments and guilty pleas entered so far, why would you express sympathy for the President's insulting characterization of the Special Counsel's work?

RESPONSE: (b) (5)

2. You mentioned that you had lunch with Deputy Attorney Rod Rosenstein and tried to sell him on your theory that a President can never obstruct justice if his actions are among those properly delegated to the Chief Executive, even if they have a corrupt intent. You described his reaction as "sphinx-like." Did you think that reaction was improper, given the fact that you were not a Department official and had no basis to be involved in the case? Are you implying he should have reacted more positively to you? Why?

RESPONSE: (b) (5)

3. To explain why you provided unsolicited input to narrow the scope of Special Counsel Mueller's investigation – efforts that you noted were resisted by Deputy Attorney General Rosenstein – you asserted that you also "weighed in repeatedly to complain about the idea of prosecuting Senator Menendez" when your "friend . . . was his defense counsel."
 - a. Do you think it is proper for non-Department of Justice (DOJ) officials, including former Attorneys General, to weigh in to seek to influence law enforcement decisions, particularly when such decisions have a personal benefit?

RESPONSE: (b) (5)

- b. Should you be confirmed, how will you respond when others give you unsolicited input or seek to influence Special Counsel Mueller's investigation?

RESPONSE: (b) (5)

4. In the 19-page unsolicited memo addressed to Justice Department officials that you distributed to Donald Trump's private and White House Attorneys, you argued that "Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction" and that "[i]t is inconceivable to me that the Department could accept Mueller's interpretation of §1512(c)(2). It is untenable as a matter of law and cannot provide a legitimate basis for interrogating the President." Despite making such strong and unequivocal assertions, you claimed you did not know many facts about Special Counsel Mueller's investigation.

You testified at your hearing that you "do not recall getting any confidential information about the investigation." Please review your emails, notes, and any other relevant materials. Having reviewed those materials, did you receive any confidential information about Special Counsel Mueller's investigation? Do you recall getting any information whatsoever about the investigation from anyone? If you did, who gave it to you?

RESPONSE: (b) (5)

5. At your hearing, you mentioned two meetings you had with Donald Trump.
- a. Are those two meetings that you mentioned at the hearing the only times you have met with Donald Trump? If not, when else have you met with him? Where?
- b. Have you had any telephone conversations with Donald Trump? If so, where? When?
- c. Please tell us the details of all of your meetings and telephone calls with the President, including the following:
- Where were the meetings?
 - Who was present for the meetings and the phone calls?
 - How long did each meeting or phone call last?
 - What was discussed?
 - What promises, if any, did the President ask you to make?
 - Did the President ask for your loyalty?
 - Did he make any threats?
 - Do you have any notes from any of the meetings or phone calls?
 - Did anyone else in the meetings or on the phone calls take notes?

RESPONSE: (b) (5)

6. The former head of the Office of Government Ethics, Walter Shaub, believes you were wrong in your testimony about government ethics rules. You testified that you would seek the opinion of ethics officials about whether or not you should recuse yourself from the Special Counsel's investigation, but that you would not necessarily follow it. You reserved the right to ignore their advice and decide for yourself. Mr. Shaub points to 5 C.F.R. 2635.502(c), which requires you to follow the guidance of your designated agency ethics official. Is Mr. Shaub correct? If not, why not?

RESPONSE: (b) (5)

7. In light of 5 C.F.R. 2635.502(c), will you commit to following the opinion of career ethics officials on whether or not you should recuse yourself from the Special Counsel's investigation?

RESPONSE: (b) (5)

8. You testified at your hearing that you think former FBI Director James Comey "is an extremely gifted man who has served the country with distinction in many roles," although you disagreed with some actions he took in the investigation of Hillary Clinton's emails. What do you think about the President's insults of Mr. Comey? The President has referred to the former FBI Director as "Leakin' James Comey," called him a liar multiple times, a "bad guy," a "slime ball," "slippery," and "shady."

RESPONSE: (b) (5)

9. At your hearing, you testified to Senator Cornyn that you "completely agree with" the memo Rod Rosenstein wrote justifying former FBI Director James Comey's firing.

But do you believe Donald Trump really fired James Comey because he was too harsh on Hillary Clinton, or because he didn't follow Department of Justice guidelines? Do you discount the other explanations Donald Trump has given – specifically, that he told Lester Holt of NBC on air that he fired Mr. Comey because of "this Russia thing," and that he told the Russian Ambassador and Russian Foreign Minister in the Oval Office that he fired Mr. Comey, referring to the former FBI Director as "crazy, a real nut job," and saying, "I faced great pressure because of Russia. That's taken off."?

RESPONSE: (b) (5)

10. You told Sen. Feinstein at your hearing that you would "[a]bsolutely" commit "to ensuring that Special Counsel Mueller is not terminated without good cause consistent with Department regulations."

Would the President's displeasure with a lawful action by Special Counsel Mueller taken in accordance with Justice Department regulations constitute good cause?

RESPONSE: (b) (5)

11. You told Senator Durbin at your hearing that there is nothing wrong with an Attorney General taking a policy position that happened to have a political benefit to it. But do you agree that an Attorney General should not formulate policies just BECAUSE they are politically advantageous?

RESPONSE: (b) (5)

12. At your hearing, you told Senator Whitehouse that with respect to finding out the sources of payments to Acting Attorney General Whitaker, "my first consideration always is where do you – where do you draw the line, and also what are the implications for other kinds of entities because, you know, there are membership groups and First Amendment interests" Why is that your FIRST consideration? What about transparency and confidence in the system? Shouldn't they be your first considerations in addressing conflicts of interest by the nation's top law enforcement official?

RESPONSE: (b) (5)

13. I asked you at your hearing whether you believe birthright citizenship is guaranteed by the Fourteenth Amendment. You said you had not looked at the issue and that you would ask the Justice Department's Office of Legal Counsel to advise you on "whether it is something that is appropriate for legislation."

In 1995, Walter Dellinger, then-Assistant Attorney General for the Office of Legal Counsel testified in the House Judiciary Subcommittees on Immigration and Claims and on the Constitution that to change birthright citizenship the Constitution would have to be amended. See <https://www.justice.gov/file/20136/download>.

Now that you have had a chance to look at the Constitution, and read Mr. Dellinger's testimony, do you believe that birthright citizenship is guaranteed by the 14th Amendment?

RESPONSE: (b) (5)

14. When you were Attorney General for President George H.W. Bush, you recommended that he pardon people implicated in the Iran-Contra scandal. You told the Miller Center

about it, saying, “I went over and told the President I thought he should not only pardon Caspar Weinberger, but while he was at it, he should pardon about five others. I favored the broadest — There were some people arguing just for Weinberger, and I said, ‘No, in for a penny, in for a pound.’ Elliot[t] Abrams was one I felt had been very unjustly treated.”

President Bush issued the pardons you recommended, and they were widely viewed as having the effect of protecting the President and others from having to testify in any related cases. At the time the pardons were issued, Independent Counsel Lawrence Walsh, criticized them, and said, “The Iran-Contra cover-up, which has continued for more than six years, has now been completed.”

a. Why did you recommend the Iran-Contra pardons?

RESPONSE: (b) (5)

b. If confirmed, will you recommend that Donald Trump pardon any of the people who have already been convicted or have pleaded guilty under Special Counsel Robert Mueller’s investigation or in related cases?

RESPONSE: (b) (5)

c. Would you agree that pardoning anyone who is subject to a current indictment or will be subject to a future indictment by the Special Counsel could be seen as undermining the Special Counsel’s investigation and an abuse of the President’s pardon power?

RESPONSE: (b) (5)

d. Do you believe it is proper for the President to use his pardon power to pardon his family members or any associates, businesses, foundations, campaigns, or organizations in which he has a personal interest?

RESPONSE: (b) (5)

e. Will you recommend Donald Trump pardon any of the people convicted, indicted, or under investigation by Special Counsel Robert Mueller or any of the related cases in other districts that relate to President Trump’s business, foundation, campaign, inauguration, administration, family, or associates?

RESPONSE: (b) (5)

15. At your hearing, you stated, “I will vigorously enforce the Voting Rights Act.” The Trump administration has not brought a single lawsuit to enforce the Voting Rights Act. Moreover, the administration has actually withdrawn the Justice Department’s claim

against a Texas voter ID law that a federal district court judge found was enacted with discriminatory intent and reversed its position in a case by defending Ohio's voter purge efforts that Justice Sotomayor recognized "disproportionately affected minority, low-income, disabled, and veteran voters." In fact, career attorneys in the Civil Rights Division did not sign the amicus brief defending the voter purge efforts as they did the prior brief.

- a. Since you agreed that you would "vigorously enforce the Voting Rights Act," should you be confirmed, will you commit to asking the Voting Rights Section of the Civil Rights Division to present to you all the instances where the Justice Department has been asked to initiate Section 2 claims under the Voting Rights Act and allowing the career attorneys in the Voting Rights Section to bring claims where appropriate?

RESPONSE: (b) (5)

- b. Similarly, if confirmed, will you commit to investigating, evaluating, and reviewing those states and jurisdictions—including any that were formerly covered under the Voting Rights Act's preclearance system—that have passed voting laws that tend to hinder voter turnout to determine if they are, in fact, discriminatory, and to bring Section 2 claims under the Voting Rights Act for any that are found to have a discriminatory impact or purpose?

RESPONSE: (b) (5)

- c. Should you be confirmed, will you commit to working with Congress to support a fix to Section 5 of the Voting Rights Act, which was nullified by the Supreme Court in *Shelby County v. Holder*?

RESPONSE: (b) (5)

- d. If confirmed, will you commit to reviewing the decisions by the Justice Department to switch positions in the following two cases to determine whether customary processes for changing the government's position in a case were followed and what, if any, improper influences impacted those decisions? The two cases are: (1) *Veasey v. Abbott*, where the Department withdrew its claim that a Texas voter ID law was enacted with a discriminatory intent, despite a finding of discriminatory intent by a federal district court, and (2) *Husted v. A. Philip Randolph Institute*, where the Department reversed its position by defending Ohio's voter purge efforts under the National Voter Registration Act, even though Justice Sotomayor recognized such efforts "disproportionately affected minority, low-income, disabled, and veteran voters."

RESPONSE: (b) (5)

- 16. After the Supreme Court's decision in *Shelby County v. Holder*, many states passed voting restriction laws based on claims of going after voter fraud. But a 2014 study found a total

of 31 credible allegations of voter fraud between 2000 and 2014 out of more than 1 billion votes cast.

- a. Are you aware of any credible study that confirms that there was massive voter fraud, not election fraud, in either the 2016 or 2018 election?

RESPONSE: (b) (5)

- b. Do you agree that voter fraud is incredibly rare in the context of the number of votes cast?

RESPONSE: (b) (5)

17. In a 2017 report entitled *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, the Civil Rights Division explained that "its experience demonstrates that court-enforceable consent decrees are most effective in ensuring accountability, transparency in implementation, and flexibility for accomplishing complex institutional reforms. Federal court oversight is often critical to address broad and deeply entrenched problems and to ensure the credibility of the reform agreement's mandates." But last November, just before leaving the Department, former Attorney General Jeff Sessions issued a memo that drastically limited use of consent decrees to bring police departments into compliance with the Constitution. At your hearing, you stated that you agreed with Mr. Sessions's memo and questioned whether the policy changes in the memo would make it tougher to enter into consent decrees for pattern or practice violations.

- a. Do you agree with the Civil Rights Division's report that based on its experience, "court-enforceable consent decrees are most effective" in accomplishing complex institutional reforms in a transparent way that ensures accountability?

RESPONSE: (b) (5)

- b. Despite the Civil Rights Division's finding regarding the historical effectiveness of consent decrees, Mr. Sessions's memo warns that "the Department should exercise special caution before entering into a consent decree with a state or local governmental entity." Among other changes, it requires any consent decrees to be approved not only by the Assistant Attorney General for Civil Rights or the U.S. Attorney, but also by the Deputy Attorney General or the Associate Attorney General. Would you now agree that that Mr. Sessions's memo imposes more stringent requirements for the Civil Rights Division to pursue consent decrees, making it harder to enter into consent decrees for pattern or practice violations? If not, please explain.

RESPONSE: (b) (5)

- c. At your hearing, you recognized that “the Department has a role in pattern and practice violations.” Please specify what role you believe the Civil Rights Division should play in pattern or practice violations.

RESPONSE: (b) (5)

18. Former Attorney General Sessions eliminated a highly effective program handled by the Office of Community Oriented Policing Services—also known as the COPS Office—that allowed local police departments to voluntarily work with Justice Department officials to improve trust between police and the public without court supervision and consent decrees. Former head of the Justice Department’s Civil Rights Division Vanita Gupta criticized this decision, saying “[e]nding programs that help build trust between police and the communities they serve will only hurt public safety.”

Under the Collaborative Reform Initiative for Technical Assistance program, local police departments involved in controversial incidents, such as police-involved shootings, would ask the COPS Office to investigate and issue public reports with recommendations.

- a. If confirmed, will you reinstate this program?

RESPONSE: (b) (5)

- b. If confirmed, what steps will you take to support and promote community-oriented policing?

RESPONSE: (b) (5)

19. The Washington Post published an article on January 3, 2019 that reported that a “recent internal Justice Department memo directed senior civil rights officials to examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be.” In 2015, the Supreme Court, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, affirmed that the Fair Housing Act protects against discrimination based on a disparate impact.

- a. Do you believe that there are actions that can have a discriminatory impact regardless of intent? If so, how do you propose such actions should be addressed or remedied?

RESPONSE: (b) (5)

- b. Do you believe that a valid way to demonstrate discrimination is through a disparate impact analysis?

RESPONSE: (b) (5)

- c. If you are confirmed, will you continue this reported DOJ effort to change or remove disparate impact regulations related to enforcing civil rights laws?

RESPONSE: (b) (5)

20. Last July, the Justice and Education Departments rescinded policy guidelines promoting diversity in education. This was in the context of a lawsuit brought by a conservative organization to challenge Harvard's diversity admissions policies. When you worked for the Reagan administration you co-wrote a memo arguing that you "want[ed] a color blind society" and did not "embrace the kind of social engineering that calls for quotas, preferential hiring and the other approaches that do nothing but aim discrimination at other racial groups."

- a. Is it your view that policies that promote diversity are the same as discrimination against other racial groups?
- b. If confirmed, will you commit to not intervening in the Harvard lawsuit or others like it?

RESPONSE: (b) (5)

21. The Justice Department includes the Office on Violence Against Women (OVW), which currently administers 25 grant programs authorized by the Violence Against Women Act (VAWA) and subsequent legislation. VAWA protects and provides services to survivors of dating violence, domestic violence, sexual violence, and stalking – four issues that impact people of all genders and sexual orientations. The law also prohibits discrimination on the "basis of actual or perceived race, color, religion, national origin, sex, gender identity..., sexual orientation, or disability."

- a. Do you believe that VAWA's protections should be extended to LGBTQ survivors of violence more fully than the current level?

RESPONSE: (b) (5)

- b. Should you be confirmed, how will you ensure that LGBTQ survivors of violence are included and represented in the services of OVW?

RESPONSE: (b) (5)

22. Recent surveys of law enforcement officials, court officials, legal service providers, and victim advocates have found that fear of immigration enforcement is a significant barrier for immigrant survivors of sexual assault and domestic violence to seek help from law enforcement and the legal system. The immigration provisions of the Violence Against Women Act were enacted to address how the immigration process can be used by domestic violence, sexual assault, dating violence and stalking abusers to further perpetrate abuse and maintain control over their victims.

If you are confirmed, what steps would you take to support access for vulnerable victims

to VAWA's protections for non-citizen victims of domestic violence, sexual assault, dating violence, and stalking?

RESPONSE: (b) (5)

23. Native Americans experience higher rates of domestic violence and sexual assault. According to a 2016 National Institute of Justice study, 56.1% of American Indian and Alaska Native women have experienced sexual violence in their lifetimes.

Should you be confirmed, what steps will you take to ensure that the Office on Violence Against Women addresses the needs of Native Hawaiian, Alaska Natives, and American Indian survivors of domestic violence and sexual assault?

RESPONSE: (b) (5)

24. When you left the Reagan Administration's Domestic Policy Council, you talked derisively about women's issues, calling feminist agenda items "pernicious" and saying, "I think the whole label women's issues is a crock."
- a. Do you still believe issues of equality for women in the workplace and elsewhere are a "crock"?
 - b. Do you believe women are discriminated against?
 - c. What is your view of the "Me Too" movement?
 - d. What do you think the role of the Justice Department should be in ensuring equality for women, and ensuring harassment-free workplaces and industries?

RESPONSE: (b) (5)

25. At your hearing, Sen. Blumenthal asked you if you would defend *Roe v. Wade* if it were challenged. You responded, without answering his question, stating: "Would I defend *Roe v. Wade*? I mean, usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that." You testified in 1992 that you believed the Supreme Court's decision in *Planned Parenthood v. Casey* "didn't go far enough" in allowing restrictions on abortions and that "*Roe v. Wade* should be overruled." Currently there are efforts to effectively gut *Roe* by narrowing it. For example, in last March, Mississippi enacted one of the most restrictive abortion laws in the country – a ban on abortions after 15 weeks. In striking down the law, the federal judge observed: "The State chose to pass a law it knew was unconstitutional to endorse a decades-long campaign, fueled by national interest groups, to ask the Supreme Court to overturn *Roe v. Wade*."

Should you be confirmed, if a case came before the Supreme Court or a lower court that presented the possibility of narrowing *Roe v. Wade*, would you have the Solicitor General or a DOJ component weigh in and argue for narrowing the scope of *Roe*, even if the case did not involve a federal statute or program?

RESPONSE: (b) (5)

26. The Justice Department has the responsibility for enforcing the Americans with Disabilities Act (ADA), one of the most successful civil rights laws passed in the United States. It has integrated people with disabilities into American life in ways they had not been before.

Last Congress, the House of Representatives passed H.R. 620, the “ADA Education and Reform Act of 2017,” which would remove most incentives for businesses to accommodate people with disabilities, and reward businesses for ignoring their responsibilities under the law. It was opposed by disability rights groups, and seen as a giant step backward for the country.

- a. Do you support these restrictions on the ADA’s protections?

RESPONSE: (b) (5)

- b. Do you believe the ADA goes too far in protecting the rights of people with disabilities?

RESPONSE: (b) (5)

- c. If confirmed, will you allow the Disability Rights Section of the Civil Rights Division to robustly enforce the ADA?

RESPONSE: (b) (5)

27. You criticized former Acting Attorney General Sally Yates for refusing to defend Donald Trump’s Muslim Ban because she did not think it was constitutional. But at your 1991 confirmation hearing, you told Senator Paul Simon that you would do the same. He asked you, “...would you automatically defend [a statute] even if you believe it is unconstitutional?” You responded, “No. In fact, I have told agencies I wouldn’t defend regulations, not only if they raise constitutional questions, but if I don’t think the regulation is consistent with Congress’ intent. If the statute requires a certain action and if a regulation in my view is not consistent with the statute, then there is a legal problem with it.”

Why did you criticize Sally Yates for doing what you told Senator Simon you would do?

RESPONSE: (b) (5)

28. More than a year after the 2016 election, you told the New York Times, “I have long believed that the predicate for investigating the uranium deal, as well as the foundation, is far stronger than any basis for investigating so-called ‘collusion.’” Both Senator Leahy and Senator Blumenthal asked you about this at your hearing, but I found your answers unclear.

- a. Can you explain clearly and succinctly exactly what you believed the predicate for investigating the “uranium deal” and the Clinton Foundation were?
- b. What evidence did you have to support your contention?
- c. Where did you get that evidence?
- d. What evidence supporting an investigation into the Trump campaign’s possible collusion with Russia were you comparing it to?
- e. What was your standard for comparison?
- f. Now that you’re aware of all of the evidence of contacts and cooperation between Russian officials (many in Russian intelligence) and high-ranking officials of the Trump campaign (Paul Manafort, Jared Kushner, Donald Trump, Jr., and Rick Gates, to name a few), has your assessment of the strength of the predicate for investigating possible conspiracy changed?

RESPONSE: (b) (5)

29. At your hearing, you promised Senator Graham you would “look in to see what happened in 2016.”

- a. What exactly have you agreed to investigate?

RESPONSE: (b) (5)

- b. How will it be different from any existing investigations into what the FBI was investigating related to the 2016 elections?

RESPONSE: (b) (5)

- c. How will it be different from the DOJ Inspector General’s investigation into “Various Actions by the Federal Bureau of Investigation and the Department of Justice in Advance of the 2016 Election,” on which a report was issued in June 2018?

RESPONSE: (b) (5)

30. You also agreed at your hearing to look into a FISA warrant issued in relation to an investigation into Carter Page.

a. What exactly have you agreed to investigate?

RESPONSE: (b) (5)

b. What evidence do you have to doubt the integrity of a decision made by the Foreign Intelligence Surveillance Court (FISC)?

RESPONSE: (b) (5)

c. Do you think it is wise to launch a politically-motivated investigation into decisions by the FISC?

RESPONSE: (b) (5)

31. If Donald Trump declares a national emergency based on the crisis he has manufactured at the southern U.S. border, will you defend it, should you be confirmed?

RESPONSE: (b) (5)

32. When I asked you at your hearing whether you agreed with former Attorney General Sessions's zero-tolerance policy that resulted in the separation of children from their parents, you replied that you "would have to see what the basis was for those decisions" to determine whether you agreed with the policy and would continue them if you were confirmed.

You then implied that family separations were no longer a problem because the Department of Homeland Security was currently not referring migrant families for prosecution and therefore, the Justice Department's policy of prosecuting all referrals for illegal entry under its zero-tolerance policy would not result in separating families.

a. What more information do you need to know about the zero-tolerance policy that resulted in the separation of more than 2,000 children from their parents in order to determine whether you agree with that policy and whether you would continue it, if confirmed?

RESPONSE: (b) (5)

b. If the Department of Homeland Security changed course again and referred families

for prosecution of illegal entry, would you continue the zero tolerance policy, knowing that it would result in children being separated from their parents?

RESPONSE: (b) (5)

- c. Do you believe that the zero-tolerance policy of prosecuting *all* Department of Homeland Security referrals of illegal reentry is an appropriate use of the Justice Department's limited resources? If yes, will you agree to provide the Senate Judiciary Committee a review of the impact of this policy on federal prosecutions across the Justice Department within 120 days, should you be confirmed?

RESPONSE: (b) (5)

- d. If confirmed, will you continue to implement former Attorney General Sessions's April 11, 2017 memo that directs federal prosecutors to highly prioritize the enforcement of immigration laws?

RESPONSE: (b) (5)

- 33. Former Attorney General Sessions took the unusual action of intervening in an individual asylum application and deciding the case himself as a way of making policy. Mr. Sessions used the case *Matter of A-B* to overturn legal precedent and longstanding policies by significantly restricting the ability of victims of domestic violence and gang violence to obtain asylum relief. A court eventually struck down many of these new policies and ordered the government to bring prior claimants back to the United States who have already been deported so they can pursue their asylum claims.

- a. Should you be confirmed, will you comply with these court orders in a prompt manner?

RESPONSE: (b) (5)

- b. Do you think it is appropriate for an attorney general to intervene in immigration cases in order to set policies that narrow asylum protections that immigration judges have recognized were established by Congress?

RESPONSE: (b) (5)

- 34. As you know, U.S. Immigration Courts operate as a component of the Department of Justice, which creates the possibility that Immigration Judges can be subjected to inappropriate political pressure. Moreover, former Attorney General Jeff Sessions decided to effectively subject Immigration Judges to quotas, which may make it difficult for these judges to review each case fully and fairly.

What is your view of how Immigration Judges ought to be categorized and treated?

RESPONSE: (b) (5)

35. When Sen. Ernst asked you at your hearing about legislation that requires Immigration and Customs Enforcement to detain an undocumented person who is charged with a crime resulting in death or serious injury, you stated that it “sounds like a very commonsensical bill” and “something that [you] would certainly be inclined to support.”

- a. When Donald Trump began separating families at the border he created hundreds of Unaccompanied Alien Children (UAC). These children, including infants, who did not speak English, were expected to represent themselves in court. Last year, I introduced, together with Senator Feinstein, the Fair Day in Court for Kids Act. It would require that legal counsel be provided for every Unaccompanied Alien Child. Studies show that when unaccompanied minors are represented by a lawyer, they are consistently more likely to show up for immigration court – in fact, a 2014 study found that 92.5% of children with counsel attended immigration proceedings. Do you agree that providing children with legal counsel so that a child does not have to appear before a judge alone is commonsensical? Is that something that you would be inclined to support?

RESPONSE: (b) (5)

- b. Last year I introduced the Immigration Courts Improvement Act, which was endorsed by the National Association of Immigration Judges. The bill would eliminate the use of numerical completion goals as a measurement of how judges are doing their job and would insulate them from the Attorney General’s control, treating them like independent decisionmakers rather than as DOJ attorneys. Do you agree that allowing Immigration Judges to act as independent decisionmakers and insulating them from inappropriate political pressure is commonsensical? Is that something that you would be inclined to support?

RESPONSE: (b) (5)

36. In February 2018, the New York Times reported that former Attorney General Sessions had effectively shut down the Justice Department’s Office for Access to Justice, even though he cannot officially close the office without notifying Congress. The purpose of that office is to promote fairness in the justice system and increase access to legal resources for indigent litigants.

- a. If confirmed, what steps will you take to ensure that the justice system is fair for all Americans, regardless of whether they are poor or rich and regardless of their racial or ethnic background?

RESPONSE: (b) (5)

- b. Will you commit to reinstating the Office for Access to Justice by reallocating resources to this office?

RESPONSE: (b) (5)

37. In 2006, you wrote a letter to the Speaker of the House of the Massachusetts legislature to urge increased funding for the Massachusetts Legal Assistance Corporation. Donald Trump has submitted two budgets in a row proposing to defund the Legal Services Corporation. Do you agree with the President's proposal to defund the Legal Services Corporation?

RESPONSE: (b) (5)

38. The Department of Justice and its Office of Juvenile Justice and Delinquency Prevention enforce the Juvenile Justice and Delinquency Prevention Act that was passed in December 2018. The law bans states from holding children in adult jails even if they have been charged with adult crimes.

Is it still your view that chronic or serious juvenile offenders should be treated like an adult and tracked through the traditional criminal justice system? If so, if confirmed, how would you implement the Juvenile Justice and Delinquency Prevention Act?

RESPONSE: (b) (5)

39. In a report you issued as Attorney General laying out 24 recommendations to combat violent crime, you called it a "flawed notion[]" that "success in reforming inmates can be measured by their behavior in prison." Is it still your view? Do you disagree with the approach taken by the First Step Act to expand the use of "good time" credits?

RESPONSE: (b) (5)

40. The Tax Cuts and Jobs Act eliminated the income tax deduction for moving expenses for most people. Accordingly, reimbursements for moving expenses received by federal employees, such as FBI Special Agents who are required to relocate in connection with their service, are now considered income subject to taxation by the IRS. This can result in extra withholding and higher tax liability for government employees.

While the General Services Administration has taken action to give clear authorization for agencies to use the Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) to reimburse most federal employees for their extra tax liability, we are still hearing questions from Justice Department employees about whether the Department is doing everything in its power to offset the increased tax liability being faced by employees.

Given that many Justice Department employees are required to relocate in connection with their work, will you commit to using the WTA and RITA, and taking any other

actions within your power, to provide timely reimbursements for employees who face increased tax liability as a result of reimbursed moving expenses?

RESPONSE: (b) (5)

41. In October 2018, The Washington Post published an article asserting that “Attorney General Jeff Sessions and Solicitor General Noel J. Francisco have repeatedly gone outside the usual appellate process to get issues such as the travel ban, immigration and greater authority for top officials before the justices.” The article argued that they aggressively bypassed the normal process of appealing lower court decisions to circuit courts, and tried to short-circuit the judicial process on the Trump administration’s “signature issues by seeking extraordinary relief from a refortified conservative Supreme Court.”

- a. Do you believe this strategy is proper? Do you think such efforts to repeatedly bypass the normal judicial processes may erode public confidence in the judicial system?

RESPONSE: (b) (5)

- b. Should you be confirmed, will you review the Trump administration’s efforts to bypass the appellate courts and jump directly to the Supreme Court and reconsider this strategy?

RESPONSE: (b) (5)

42. In an op-ed published in The Washington Post on January 10, 2019, a former lawyer in the Justice Department’s Office of Legal Counsel (OLC) wrote:

“[W]hen I was at OLC, I saw again and again how the decision to trust the president failed the office’s attorneys, the Justice Department and the American people. The failure took different forms. Sometimes, we just wouldn’t look that closely at the claims the president was making about the state of the world. When we did look closely, we could give only nudges. For example, if I identified a claim by the president that was provably false, I would ask the White House to supply a fig leaf of supporting evidence. Or if the White House’s justification for taking an action reeked of unconstitutional animus, I would suggest a less pungent framing or better tailoring of the actions described in the order.”

She further explained that she “occasionally caught [her]self fashioning a pretext, building an alibi” for the President’s “impulsive decisions.”

- a. If you are confirmed, what steps will you take to prevent the Office of Legal Counsel from retroactively justifying the President’s decisions or policies based on a pretext or a fig leaf of evidence?

RESPONSE: (b) (5)

- b. If you are confirmed and find that the Office of Legal Counsel has justified the legality of the President's decisions or policies based on a pretext or a fig leaf of evidence, will you agree to report such actions to the Senate Judiciary Committee?

RESPONSE: (b) (5)

43. In a panel at Hastings Law School, you once said of judicial selection, "[o]f course you're picking them for their personal beliefs....I think political philosophy is an important part of what makes a judge."

If confirmed, will you recommend to judicial nominees – who are prepared for their hearings by Justice Department lawyers – that they answer questions posed by Senators about their personal beliefs? If political philosophy is an important part of what makes a judge, why should nominees be reluctant to discuss theirs?

RESPONSE: (b) (5)

44. You also said at that Hastings event that you think the reason the President appoints judges is so the judiciary is "responsive to the popular will." Donald Trump has given a very large role in judicial selection to outside, non-governmental groups. In particular, he has chosen many of his lower court judges, and both of his Supreme Court justices, from a list compiled by the Federalist Society and the Heritage Foundation. Do you think the authors of the Constitution intended the judiciary to be responsive to the will of the Federalist Society and the Heritage Foundation?

RESPONSE: (b) (5)

45. In your written statement, you state, "As Attorney General, my allegiance will be to the rule of law, the Constitution, and the American people." It does not appear that Donald Trump views the role of the Attorney General in that way. From the time he recused himself from the Russia investigation, former Attorney General Jeff Sessions became the target of merciless attacks by Donald Trump. Beginning in the summer of 2017, and continuing to the end of Mr. Sessions's tenure, Donald Trump questioned and mocked him on Twitter. He called Mr. Sessions "weak," "beleaguered," and "disgraceful." He is even reported to have asked his advisors, "Where's my Roy Cohn?" after being "perturbed by Attorney General Jeff Sessions's decision to recuse himself from supervising the investigation into the Trump campaign's relationship with Russia."

- a. Do you think the President agrees with your vision of the Attorney General's duty?
- b. If a conflict arises between your views of the Attorney General's role and that of the President, how will you maintain your allegiance "to the rule of law, the Constitution,

and the American people”?

RESPONSE: (b) (5)

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR BOOKER

1. You testified that, if President Trump ordered you to fire Special Counsel Robert Mueller, you “would not carry out that instruction.”⁶ You have previously made the argument, however, that once the President issues an order, the Attorney General has two options: follow the order or resign.

In a February 2017 op-ed, you said that President Trump was “right” to fire Acting Attorney General Sally Yates for refusing to carry out the President’s first Muslim travel ban.⁷ She had determined the order was unlawful, and so she refused to direct the Justice Department to defend it.⁸ You wrote that Ms. Yates’s action was “unprecedented and must go down as a serious abuse of office.” You added that “neither her policy objection nor her legal skepticism can justify her attempt at overruling the president.” And you noted that “she was free to resign if she disagreed.”

This argument aligns with comments you made in 2006, describing the Attorney General’s constitutional relationship to the President as follows: “That is a presidential function you’re carrying out. If he doesn’t like the way you’re doing it or you don’t like what he’s telling you to do, you resign or he fires you, but it’s his function.”⁹

- a. If President Trump ordered you to fire Special Counsel Mueller without cause, why shouldn’t we expect that you would take the approach you suggested to Acting Attorney General Yates: either carry out the President’s order regardless of any doubts about its propriety or legality, or resign if you fundamentally disagree?
- b. Based on the view that you previously expressed about Acting Attorney General Yates’s situation—follow the President’s order or resign—on what basis would you refuse to carry out an order from President Trump to fire Special Counsel Mueller, as you pledged to this Committee?

⁶ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

⁷ William Barr, *Former Attorney General: Trump Was Right To Fire Sally Yates*, WASH. POST (Feb. 1, 2017), https://www.washingtonpost.com/opinions/former-attorney-general-trump-was-right-to-fire-sally-yates/2017/02/01/5981d890-e809-11e6-80c2-30e57e57e05d_story.html.

⁸ Matt Apuzzo, Eric Lichtblau & Michael D. Shear, *Acting Attorney General Orders Justice Dept. Not To Defend Refugee Ban*, N.Y. TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/attorney-general-civil-rights-refugee.html>.

⁹ MILLER CENTER, UNIV. OF VA., PROCEEDINGS OF THE LLOYD N. CUTLER CONFERENCE ON THE WHITE HOUSE COUNSEL (Nov. 10-11, 2006), in SJQ Attachments to Question 12(d) at 61.

- c. If President Trump demanded the repeal of the Justice Department’s Special Counsel regulations—so that President Trump could try to personally fire Special Counsel Mueller—would you follow that order without questioning whether it was legal or proper?

RESPONSE: (b) (5)

2. On the issue of making Special Counsel Mueller’s report public, you testified that “there are two different reports. . . . [U]nder the current regulations, the special counsel report is confidential. The report that goes public would be a report by the Attorney General.” You also testified: “[T]he regs do say that Mueller is supposed to do a summary report of his prosecutive and his declination decisions, and that they will be handled as a confidential document, as are internal documents relating to any federal criminal investigation. Now, I’m not sure—and then the A.G. has some flexibility and discretion in terms of the A.G.’s report. What I am saying is, my objective and goal is to get as much as I can of the information to Congress and the public. . . . I am going to try to get the information out there consistent with these regulations. And to the extent I have discretion, I will exercise that discretion to do that.”¹⁰
 - a. Do those statements accurately reflect your interpretation of the relevant Special Counsel regulations,¹¹ or do you wish to clarify or amend them in any way?
 - b. Do you believe that, under the regulations, the Attorney General *lacks* the discretion to make Special Counsel Mueller’s report to the Attorney General public?
 - c. Do you believe that, under the regulations, the Attorney General *lacks* the discretion to share Special Counsel Mueller’s findings with the public in some format besides releasing the report itself?
 - d. In determining whether to publicly release Special Counsel Mueller’s report or other such information, would you apply the legal standard contained in the regulations— namely, whether public release “would be in the public interest”?¹²

RESPONSE: (b) (5)

3. In a July 2017 interview, you said that you “would have liked to see [Special Counsel

¹⁰ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

¹¹ 28 C.F.R. § 600.8-9.

¹² *Id.* § 600.9(c).

Mueller] have more balance” among the attorneys he had hired.¹³ Do you think it is appropriate to ask prosecutors about their political views before assigning them to a case?

RESPONSE: (b) (5)

4. President Trump has said, “I have absolute right to do what I want to do with the Justice Department.”¹⁴ Do you agree?

RESPONSE: (b) (5)

5. Presumably you are aware of the many public attacks President Trump has made against Special Counsel Mueller, his team, and his investigation.

A couple of decades ago, when an Independent Counsel was investigating the President, you coauthored an op-ed with other former Attorneys General to express concern about what you described as “attacks” on the Independent Counsel and his office “by high government officials and attorneys representing their particular interests.”¹⁵

- a. Would you apply the same words to the present situation, and affirm that Special Counsel Mueller “should be allowed to carry out his or her duties without harassment by government officials and members of the bar”?¹⁶
- b. Again applying the same words to the present situation, are you in any way “concerned that the severity of the attacks” on Special Counsel Mueller and his team “by high government officials and attorneys representing their particular interests . . . appear to have the improper purpose of influencing and impeding an ongoing criminal investigation”?

RESPONSE: (b) (5)

6. In May 2017, you published an op-ed arguing that President Trump was “right” to fire FBI Director James Comey. You wrote, “Comey’s removal simply has no relevance to the integrity of the Russian investigation as it moves ahead.”¹⁷

¹³ Matt Zapotosky, *As Mueller Builds His Russia Special-Counsel Team, Every Hire Is Under Scrutiny*, WASH. POST (July 5, 2017), <https://www.washingtonpost.com/news/post-politics/wp/2017/07/05/as-mueller-grows-his-russia-special-counsel-team-every-hire-is-under-scrutiny>.

¹⁴ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. ‘Look Very Bad,’* N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/us/politics/trump-interview-mueller-russia-china-north-korea.html>.

¹⁵ Griffin B. Bell, Edwin Meese III, Richard L. Thornburgh & William P. Barr, *Let Starr Do His Job*, WALL ST. J. (Mar. 11, 1998), <https://www.wsj.com/articles/SB889562359714297500>.

¹⁶ *Id.*

¹⁷ William Barr, *Former Attorney General: Trump Made the Right Call on Comey*, WASH. POST (May 12, 2017), https://www.washingtonpost.com/opinions/former-attorney-general-trump-made-the-right-call-on-comey/2017/05/12/0e858436-372d-11e7-b4ee-434b6d506b37_story.html.

Presumably you are aware of public reports that President Trump told Russian officials in the Oval Office, the day after he fired Mr. Comey, that he “faced great pressure because of Russia” that was “taken off” by firing him.¹⁸ Presumably you are also aware that, in a nationally televised interview, President Trump said that at the moment he decided to fire Mr. Comey, he was thinking, “This Russia thing with Trump and Russia is a made-up story.”¹⁹

In light of these remarks by President Trump, and knowing what you know today, do you still believe that his firing of Director Comey had “no relevance to the integrity of the Russian investigation”?

RESPONSE: (b) (5)

7. During your time in private practice, have you represented any foreign governments, or any organization that represents a foreign government’s interests? If so, please specify to the extent permissible any such governments or organizations.

RESPONSE: (b) (5)

8. It has been reported that, after President Trump offered you the Attorney General position, you “briefly” told him that your June 2018 memo about Special Counsel Mueller’s investigation and obstruction of justice could become an issue at your confirmation hearing.²⁰
 - a. What did you tell President Trump about the June 2018 obstruction memo?
 - b. How did President Trump respond?

RESPONSE: (b) (5)

9. In December 1992, President Bush pardoned six Reagan Administration officials implicated in the Iran-Contra affair. In an interview nine years later, you recalled your role in this decision: “I went over and told the President I thought he should not only pardon [former Secretary of Defense] Caspar Weinberger, but while he was at it, he should pardon about five others. . . . There were some people arguing just for Weinberger, and I said, ‘No, in for a penny, in for a pound.’”²¹

¹⁸ Matt Apuzzo, Maggie Haberman & Matthew Rosenberg, *Trump Told Russians That Firing ‘Nut Job’ Comey Eased Pressure From Investigation*, N.Y. TIMES (May 19, 2017), <https://www.nytimes.com/2017/05/19/us/politics/trump-russia-comey.html>.

¹⁹ Linda Qiu, *Did Trump Fire Comey Over the Russia Inquiry or Not?*, N.Y. TIMES (May 31, 2018), <https://www.nytimes.com/2018/05/31/us/politics/fact-check-trump-fire-comey-russia.html>.

²⁰ Sadie Gurman & Aruna Viswanatha, *Trump’s Attorney General Pick Criticized an Aspect of Mueller Probe in Memo to Justice Department*, WALL ST. J. (Dec. 19, 2018), <https://www.wsj.com/articles/trumps-attorney-general-pick-criticized-an-aspect-of-mueller-probe-in-memo-to-justice-department-11545275973>.

²¹ William P. Barr *Oral History: Transcript*, MILLER CTR., UNIV. OF VA. (Apr. 5, 2001), <https://millercenter.org/the-presidency/presidential-oral-histories/william-p-barr-oral-history-assistant-attorney-general>.

- a. If President Trump told you that he was considering pardoning members of his Administration, campaign staff, or other associates—or even himself—in matters relating to Special Counsel Mueller’s investigation, would you give him the same advice now: “In for a penny, in for a pound”?
- b. Do you believe there are any specific limits on the President’s pardon power, aside from what is spelled out in the text of the Constitution? If so, what are those limits?

RESPONSE: (b) (5)

10. During your nominations hearing you assured me that you would “vigorously enforce the Voting Rights Act.”²² What actions are you planning to take to “vigorously enforce the Voting Rights Act”?

RESPONSE: (b) (5)

11. According to the Justice Department’s website, the Civil Rights Division has filed *no* lawsuits to enforce Section 2 of the Voting Rights Act since President Trump took office. By comparison, the Civil Rights Division filed 5 such suits under President Obama, 15 under President George W. Bush, and 16 under President Clinton. The Department’s website also does not list any Section 2 suits from the periods when you served as Attorney General and Deputy Attorney General under President George H.W. Bush.²³
 - a. Do you believe vigorous enforcement of the voting laws, as you pledged in your testimony, includes vigorous enforcement of Section 2 of the Voting Rights Act?

RESPONSE: (b) (5)

- b. In 2017, the Department of Justice reversed the federal government’s position in *Veasey v. Perry*, which involved a challenge to what is often considered to be the nation’s strictest state voter ID law.²⁴ The reversal came after almost six years of arguing that the Texas voter ID law intentionally discriminated against minorities.²⁵ Even the Fifth Circuit Court of Appeals, one of the most conservative circuits in the nation, ruled that the Texas voter ID law discriminated against minority voters.²⁶

²² *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

²³ *Civil Rights Division: Voting Section Litigation*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/crt/voting-section-litigation> (last visited Jan. 17, 2019); see Ian Millhiser, *DOJ’s Civil Rights Division Has Not Filed a Single Voting Rights Act Case Since Trump Took Office*, THINKPROGRESS (Nov. 5, 2018), <https://thinkprogress.org/civil-rights-division-has-not-filed-a-single-voting-rights-act-case-under-trump-792914a2689a>.

²⁴ Pam Fessler, *Justice Department Reverses Position on Texas Voter ID Law Case*, NPR (Feb. 27, 2017), <https://www.npr.org/2017/02/27/517558469/justice-department-reverses-position-on-texas-voter-id-law-case>.

²⁵ *Id.*

²⁶ See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

- i. Will you make a commitment to review the Department of Justice's position in this case?

RESPONSE: (b) (5)

- ii. Will you report your conclusions to this Committee within the first 90 days of your tenure should you be confirmed?

RESPONSE: (b) (5)

12. Since the Supreme Court's decision in *Shelby County v. Holder*,²⁷ states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate a voter at the polls.²⁸ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.²⁹ Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?
- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?
- c. Do you believe that voter ID laws can disenfranchise otherwise eligible minority voters?
- d. Please provide an example of a voter ID law that you believe disenfranchises otherwise eligible minority voters.

RESPONSE: (b) (5)

13. In the twenty-first century, voter ID laws are often considered the modern-day equivalent of poll taxes. These laws disproportionately disenfranchise people of color and people of

²⁷ 570 U.S. 529 (2013).

²⁸ Justin Levitt, *The Truth About Voter Fraud*, BRENNAN CTR. FOR JUSTICE 6 (2007), <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

²⁹ Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast>.

lesser means.³⁰

- a. Do you agree that voter ID laws disproportionately disenfranchise people of color and people of lesser means?
- b. Study after study has shown that in-person voter fraud is extremely rare.³¹ Do you believe that in-person voter fraud is a widespread problem in American elections?

RESPONSE: (b) (5)

14. On January 3, 2019, the *Washington Post* reported that the Trump Administration is considering an expansive rollback of federal civil rights law.³² According to the article, “A recent internal Justice Department memo directed senior civil rights officials to examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be, according to people familiar with the matter.”³³

- a. Do you believe that actions that amount to discrimination, but that have no provable discriminatory intent, should be prohibited under federal civil rights law? In other words, is disparate impact a valid way to demonstrate discrimination?
- b. If you don’t believe disparate impact is a valid way to demonstrate discrimination, how do you propose to remedy actions that have a disparate impact on minorities?
- c. If confirmed as Attorney General, do you commit to halt this effort to rollback disparate impact regulations?

RESPONSE: (b) (5)

15. In January 2018, Attorney General Sessions rescinded the Cole Memorandum, which provided guidance to U.S. Attorneys that the federal marijuana prohibition should not be

³⁰ See, e.g., Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You’re Poor, Black, Latino or Elderly*, Wash. Post (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html; Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355>.

³¹ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

³² Laura Meckler & Devlin Barrett, *Trump Administration Considers Rollback of Anti-discrimination Rules*, WASH. POST (Jan. 3, 2019), https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874f1ac36_story.html.

³³ *Id.*

enforced in states that have legalized marijuana in some way or another.³⁴ When I asked you about this issue in your testimony last week, you stated: “My approach to this would be not to upset settled expectations and the reliance interests that have arisen as a result of the Cole Memorandum—and investments have been made, and so there’s been reliance on it, so I don’t think it’s appropriate to upset those interests. However, I think the current situation is untenable and really has to be addressed. It’s almost like a backdoor nullification of federal law. . . . I’m not going to go after companies that have relied on the Cole Memorandum. However, we either should have a federal law that prohibits marijuana everywhere—which I would support myself, because I think it’s a mistake to back off on marijuana. However, if we want a federal approach, if we want states to have their own laws, then let’s get there, and let’s get there the right way.”³⁵

- a. Do you intend to rescind Attorney General Sessions’s January 2018 memorandum on marijuana enforcement, either in part or in its entirety?
- b. Do you intend to reinstate the Cole Memorandum?

RESPONSE: (b) (5)

16. On May 10, 2017, Attorney General Sessions changed the Department of Justice’s charging and sentencing policy and directed all federal prosecutors to “pursue the most serious, readily provable offense.”³⁶ After this announcement, I wrote a letter with Senators Mike Lee, Dick Durbin, and Rand Paul asking a series of question regarding the policy change because we believed the new policy would “result in counterproductive sentences that do nothing to make the public safer.”³⁷
- a. If confirmed, will you review Attorney General Sessions’ decision to revert back to an old Department of Justice policy to “pursue the most serious, readily provable offense”?
 - b. Will you make a commitment to conduct a review of the effect the new charging and sentencing policy is having on crime deterrence, public safety, and reducing recidivism and report your findings to the Senate and House Judiciary Committees?
 - c. The letter referenced above highlighted the cases of Weldon Angelos and Alton Mills.³⁸ Do you believe the punishment fit the crime in those two

³⁴ Memorandum from Jeff Sessions, Att’y Gen., to All U.S. Att’ys on Marijuana Enforcement (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.

³⁵ *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

³⁶ Memorandum from Jeff Sessions, Att’y Gen., to the U.S. Dep’t of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

³⁷ Letter from Sen. Mike Lee et al. to Jeff Sessions, Att’y Gen., on the Department of Justice Charging and Sentencing Policy (June 7, 2016), <https://www.scribd.com/document/350652153/6-7-17-Letter-to-the-Attorney-General-on-DOJ-Charging-and-Sentencing-Policy-FINAL-SIGNED>.

³⁸ *Id.*

cases?

- d. If you are not familiar with those cases, do you commit to have the Department of Justice respond to the May 2017 letter regarding whether it believed the punishment fit the crime in those two instances?
- e. Will you make a commitment to conduct a review of all federal criminal offenses carrying mandatory minimum sentences and reporting to the Senate and House Judiciary Committees those that you believe are unfair and need adjustment?
- f. According to Attorney General Sessions's memorandum, "prosecutors are allowed to apply for approval to deviate from the general rule that they must pursue the most serious, readily provable offense."³⁹ Do you commit to providing the Senate and House Judiciary Committees information detailing the number of requests that have been made to deviate from the Department's charging policy and a breakdown of whether those requests were approved or denied?

RESPONSE: (b) (5)

17. In 2015, the Presidential Task Force on 21st-Century Policing issued a report setting forth recommendations focused on identifying best practices for policing and recommendations that promote effective crime reduction while building public trust.⁴⁰ Have you read the report? If not, do you intend to read the report?

RESPONSE: (b) (5)

18. Communities of color have the lowest rates of confidence in law enforcement. A poll from 2015-2017 indicated that 61 percent of whites had confidence in police, only 45 percent of Hispanics and 30 percent of blacks felt the same way.⁴¹ If confirmed as Attorney General, what policies and practices will you implement to rebuild trust between law enforcement and minority communities?

RESPONSE: (b) (5)

19. In the period leading up to Operation Desert Storm in the Gulf War, the FBI engaged in questioning of hundreds of Arab-American business and community leaders, on the asserted basis of collecting intelligence about possible terrorist threats. As Deputy Attorney General at the time, you said: "These interviews are not intended to intimidate. . . . The interviews are an opportunity to keep an open channel of communication with people

³⁹ Memorandum from Jeff Sessions, Att'y Gen., to the U.S. Dep't of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

⁴⁰ FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST-CENTURY POLICING (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁴¹ Jim Norman, *Confidence in Police Back at Historical Average*, GALLUP (July 10, 2017), <https://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx>.

who may be victimized if hostilities occur. At the same time, in the light of the terrorist threats . . . it is only prudent to solicit information about potential terrorist activity and to request the future assistance of these individuals.”⁴² Some community activists and others who had undergone questioning said the FBI interviews felt like “intimidation”⁴³ or “harassment.”⁴⁴

- a. Do you believe that racial profiling is wrong?
- b. Do you believe that racial profiling is an ineffective use of law enforcement resources? If not, please explain why.

RESPONSE: (b) (5)

20. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.⁴⁵ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.⁴⁶ These shocking statistics are reflected in our nation’s prisons and jails.⁴⁷ Blacks are five times more likely than whites to be incarcerated in state prisons. In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴⁸

- a. Do you believe there is implicit racial bias in our criminal justice system?
- b. Do you believe people of color are disproportionately represented in our nation’s jails and prisons?
- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

RESPONSE: (b) (5)

21. According to Pew Charitable Trusts, in the 10 states with the largest declines in their

⁴² Sharon LaFraniere, *FBI Starts Interviewing Arab-American Leaders*, WASH. POST (Jan. 9, 1991), <https://www.washingtonpost.com/archive/politics/1991/01/09/fbi-starts-interviewing-arab-american-leaders/2c89a03e-d9c5-491a-981a-08726fdcd273>.

⁴³ *Id.*

⁴⁴ Paul Hendrickson, *Caught in the Middle: Detroit’s Arab Americans*, WASH. POST (Feb. 15, 1991), <https://www.washingtonpost.com/archive/lifestyle/1991/02/15/caught-in-the-middle-detroits-arab-americans/e2e6721c-7007-432b-a806-c0770467dac4>.

⁴⁵ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

⁴⁶ *Id.*

⁴⁷ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁴⁸ *Id.*

incarceration rates, crime fell by an average of 14.4 percent.⁴⁹ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.⁵⁰

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.
- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

RESPONSE: (b) (5)

22. Do you believe it is an important goal for there to be demographic diversity among law enforcement personnel? If not, please explain your views.

RESPONSE: (b) (5)

23. In 1992, you were asked about a proposal to build a border wall along the U.S.-Mexico border. You described that border wall proposal as “overkill.”⁵¹ In fact, you said “I don’t think it’s necessary. I think that’s overkill to put a barrier from one side of the border to the other.”⁵² You then said, “In fact, the problem with illegal immigration across the border is really confined to major metropolitan areas. Illegal immigrants do not cross in the middle of the desert and walk hundreds of miles.”⁵³

At the time you made those comments in 1992, there were more than 1.1 million border apprehensions the previous fiscal year.⁵⁴ In Fiscal Year 2017, there were around 304,000.⁵⁵ That’s about an 800,000 drop in border apprehensions—a decline of about 73 percent.

Simultaneously, there have been significant increases in the amount of money spent on border enforcement. In 1992, \$326 million was spent on the U.S. Border Patrol’s

⁴⁹ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

⁵⁰ *Id.*

⁵¹ Eric Tucker, *Trump’s Pick for AG Once Questioned Value of Border Wall*, ASSOCIATED PRESS (Dec. 31, 2018), <https://www.apnews.com/01712e03bb324664b870cc74cc2f9c8d>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ U.S. Border Patrol, *Southwest Border Sectors: Total Illegal Alien Apprehensions by Fiscal Year*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2017.pdf> (last visited Jan. 16, 2019).

⁵⁵ *Id.*

budget.⁵⁶ Now, \$3.8 billion is appropriated to U.S. Border Patrol to secure our borders.⁵⁷

- a. Do you still believe building a border wall along the U.S.-Mexico border in 1992 was “overkill”?
- b. Do you believe building a border wall along the entire U.S.-Mexico border wall now is “overkill”?
- c. In 1992, during President George H.W. Bush’s administration, did you believe the United States was experiencing a “crisis” at the border?
- d. Do you believe the United States is experiencing a “crisis” at the U.S.-Mexico border now as President Donald Trump claims?
- e. Since 1986, what years would you characterize the situation at the border as “stable”?

RESPONSE: (b) (5)

24. While you were Attorney General during the Bush Administration, you hired 200 additional Immigration and Naturalization investigators and created the National Criminal Alien Tracking Center to “combat illegal immigration and violent crime by criminal aliens.”⁵⁸ Also, during a 1992 interview with the *Los Angeles Times*, you appeared to partially hold undocumented immigrants accountable for the riots following the acquittal of law enforcement officers in the beating of Rodney King. You said, “The problem of immigration enforcement—making sure we have a fair set of rules and then enforce them—I think that’s certainly relevant to the problems we’re seeing in Los Angeles. . . . I think there was anger and frustration over the verdict in the Rodney King⁵⁹ incident that certainly wasn’t limited to Los Angeles, but I do think that there were a lot of unique circumstances in Los Angeles that came together in a way that added to the combustibility of the post-verdict hours and contributed to the intensity and the scale of the violence in Los Angeles.”⁶⁰

- a. Do you believe that immigrants—whether they are documented or undocumented— are prone to criminality?

⁵⁶ *The Cost of Immigration Enforcement and Border Security*, AM. IMMIGRATION COUNCIL 2 (Jan. 25, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf.

⁵⁷ *Id.*

⁵⁸ *Department of Justice Authorization for Fiscal Year 1993 Before the Senate Committee on the Judiciary*, 103d Cong. (1992) (statement of William P. Barr, Att’y Gen.), <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/06-30-1992.pdf>.

⁵⁹ Ronald J. Ostrow, *William Barr: A ‘Caretaker’ Attorney General Proves Agenda-Setting Conservative*, L.A. TIMES (June 21, 1992), http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general/2.

⁶⁰ *Id.*

- b. If you believe that immigrants are prone to criminality, what studies are you relying on in making that judgment?

RESPONSE: (b) (5)

25. In 2018, the Cato Institute, a libertarian think tank, issued a study that found that immigrants who entered the United States legally were 20 percent less likely to be incarcerated as native-born Americans.⁶¹ The research also found that undocumented immigrants were half as likely to be incarcerated as native-born Americans.⁶² Do you have any reason to doubt the findings of this research?

RESPONSE: (b) (5)

26. On April 6, 2018, Attorney General Sessions announced a “zero tolerance” policy for criminal illegal entry and directed each U.S. Attorney’s Office along the Southwest Border to adopt a policy to prosecute all Department of Homeland Security referrals “to the extent practicable.”⁶³ A month later, on May 7, 2018, the Trump Administration announced that the Department of Homeland Security will refer any individuals apprehended at the Southwest Border to the Department of Justice.⁶⁴ This policy resulted in thousands of immigrant children being cruelly separated from their parents.⁶⁵

- a. Do you agree with Attorney General Sessions’s decision to institute a “zero tolerance” policy?
- b. Do you believe it is humane to separate immigrant children and their parents after they are apprehended at the U.S.-Mexico border?
- c. Will you make a commitment not to reinstitute a “zero tolerance” policy or anything resembling the policy?

RESPONSE: (b) (5)

27. On September 27, 2016, I sent a letter to then-Secretary Jeh Johnson opposing family

⁶¹ Alex Nowrasteh, *Immigration and Crime—What the Research Says*, CATO INST. (July 14, 2015), <https://www.cato.org/blog/immigration-crime-what-research-says>.

⁶² *Id.*

⁶³ Press Release, U.S. Dep’t of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

⁶⁴ Jeff Sessions, Att’y Gen., Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

⁶⁵ Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX (June 15, 2018) <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

detention and urging the Obama Administration to end its use of the practice.⁶⁶ The letter said, “Detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means.”⁶⁷ The letter also noted that “[t]here is strong evidence and broad consensus among health care professionals that detention of young children, particularly those who have experienced significant trauma as many of these children have, is detrimental to their development and physical health.”⁶⁸

- a. Do you agree that detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means?
- b. Do you believe that detention of children—regardless of whether it is with or without their parents—has a detrimental effect on their development and physical health?

RESPONSE: (b) (5)

28. Attorney General Sessions made it virtually impossible for victims of domestic violence or gang violence to seek asylum in the United States.⁶⁹ He did so by personally intervening in an asylum application of a woman who was a victim of domestic violence at the hands of her husband.⁷⁰ He used her case to disqualify entire categories of claims that were legitimate grounds for asylum.⁷¹

- a. Do you believe being a victim of domestic violence should be a valid reason for seeking asylum in the United States?
- b. Do you believe being a victim of gang violence should be a valid reason for seeking asylum in the United States?
- c. Do you commit to reversing Attorney General Sessions’s decision invalidating domestic violence or gang violence as grounds for claiming asylum?

RESPONSE: (b) (5)

29. Census experts and senior Census Bureau staff agree that a last-minute, untested citizenship question could create a chilling effect and present a major barrier to

⁶⁶ Letter from Sen. Patrick Leahy et al. to Jeh Johnson, Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 27, 2016), <https://www.leahy.senate.gov/imo/media/doc/Letter%20to%20Sec.%20Johnson%20re%20Berks%20Family%20Detention%20Center.pdf>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Katie Benner & Caitlin Dickerson, *Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum*, N.Y. TIMES (June 11, 2018), <https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>.

⁷⁰ *Id.*

⁷¹ *Id.*

participation in the 2020 Census. Many vulnerable communities do not trust the federal government's commitment to maintaining the confidentiality of Census data and are fearful that their responses could be used for law enforcement, including immigration enforcement, purposes. A citizenship question would exacerbate their concerns.

Alarming documents revealed in the ongoing citizenship question litigation indicate that DOJ staff were open to reevaluating a formal Justice Department legal opinion from 2010 that there are no provisions within the USA PATRIOT Act that can be used to compel the Commerce Secretary to release confidential census information—that is, that supersede the strict confidentiality protections in the Census Act. In November, I joined my colleagues Senator Schatz and Senator Reed in a letter to Assistant Attorney General Eric Dreiband, seeking a clarification of the existing law, a commitment to maintaining the confidentiality of information collected by the Census Bureau, and assurances that personal Census responses cannot be used to the detriment of any individual or family, by the Justice Department, the Department of Homeland Security, or any other agency of government at any level.

Although litigation has continued for months, a federal district court—last Tuesday, the same day you appeared before this Committee—issued an exceptionally thorough and thoughtful ruling that blocked the Commerce Department from adding the citizenship question to the Census.

- a. When you were asked at the hearing about the Trump Administration's position in this case, you answered, "I have no reason to change that position."⁷² What circumstances would lead you to reconsider the Justice Department's defense of the Administration's position concerning the addition of the citizenship question to the Census?
- b. Do you agree that the confidentiality of Census data is fully protected by law?
- c. Will you make a commitment that, if confirmed, you will ensure the Justice Department abides by all laws protecting the confidentiality and nondisclosure of Census data, and that you will prohibit the use of Census data for the purposes of immigration-related enforcement against any person or family?
- d. Will you make a commitment that, if confirmed, you will reaffirm the Office of Legal Counsel's interpretation that the USA PATRIOT Act does not weaken or change any confidentiality protection embodied in the Census Act?

RESPONSE: (b) (5)

30. Across the economy, the largest companies are taking over an ever greater share of the market—conducting mergers, acquiring other companies, and squeezing smaller

⁷² *Hearing on Nomination of William P. Barr To Be U.S. Attorney General*, 116th Cong. (Jan. 15, 2019) (statement of William P. Barr), <http://www.cq.com/doc/congressionaltranscripts-5444712?1>.

competitors out. According to a 2016 study from the Levy Economics Institute at Bard College, the years between 1990 and 2013 saw the most sustained period of merger activity in American corporate history, with the concentration of corporate assets more than doubling during this period. The same study also found that the 100 largest companies in the United States now control one-fifth of all corporate assets. Another survey analyzed hundreds of U.S. industries and found that the top four companies in each industry expanded their share of revenues from 26 percent of the industry total in 1997 to 32 percent in 2012. The upshot is that competition is falling, prices are rising, and wages are stagnant.⁷³

- a. Do you believe that corporate concentration is a problem in the U.S. economy? If so, what measures would you consider taking through the Department of Justice's antitrust authorities to address that problem?
- b. Given the race to consolidate that is occurring in many industries, will the Justice Department on your watch engage in rigorous scrutiny, heed all applicable antitrust laws, and if necessary reject mergers that will cut down competition and hurt consumers?
- c. In your estimation, at what point does market concentration become excessive?
- d. If the evidence shows that a merger will lead to an increase in the prices consumers pay, do you believe that such a merger would promote the public interest?
- e. To take one example, the agriculture sector has become increasingly highly concentrated, favoring the interests of major corporations and squeezing small family farmers. Today 65 percent of all pork, 53 percent of all chicken, and 84 percent of all beef is slaughtered by just four companies.⁷⁴ Small family farmers often confront a hard choice: try to compete with huge corporations, or work for them through starkly one-sided contracts. Do you believe that corporate concentration in American agriculture should be the subject of careful regulatory scrutiny?

RESPONSE: (b) (5)

⁷³ See Cory Booker, *The American Dream Deferred*, BROOKINGS INST. (June 2018), <https://www.brookings.edu/essay/senator-booker-american-dream-deferred>.

⁷⁴ Leah Douglas, *Consolidation Is Eating Our Food Economy*, NEW AM. (May 5, 2016), <https://www.newamerica.org/weekly/122/consolidation-is-eating-our-food-economy>

QUESTIONS FOR THE RECORD
WILLIAM P. BARR
NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR HARRIS

1. At your confirmation hearing, you agreed to follow the Special Counsel regulations in your handling of Robert Mueller's investigation into Russian interference in the 2016 election. Among other things, those regulations require the Attorney General to notify the House and Senate Judiciary Committees, with an explanation for each action upon conclusion of the Special Counsel's investigation.
 - a. If confirmed, will you commit to working with Mr. Mueller to ensure that he agrees with the representations, descriptions, and summaries in your report(s) to Congress?
 - b. If confirmed, will you commit to working with Mr. Mueller to ensure that he agrees with any decision to withhold information from Congress, whether for privilege or otherwise?

RESPONSE: (b) (5)

The regulations also state that the Attorney General may publicly release the Special Counsel's report, if release is in the public interest and to the extent that release complies with applicable legal restrictions.

- c. If confirmed, what facts and principles will guide your decision about whether or not to publicly release the Special Counsel's report?

RESPONSE: (b) (5)

2. In August 2017, the Justice Department began investigating Harvard University for its affirmative action policies. One year later, the Justice Department filed a statement of interest in a federal case opposing Harvard University's affirmative action policies.
 - a. As a practical matter, do you believe that educational institutions are likely to be able to achieve meaningful racial diversity without recognizing and taking account of race?

RESPONSE: (b) (5)

From: Escalona, Prim F. (OLA)
To: Gannon, Curtis E. (OLC); Michel, Christopher (OSG); Wiegmann, Brad (NSD); Burnham, James M. (CIV); Assefi, Omeed (CRT); Lucas, Daniel (JMD); Champoux, Mark (OLP); Wong, Candice (CRM); Wong, Norman (USAEO); Crowell, James (USAEO); Costigan, Michael (OJP); (b)(6), (b)(7)(C) per BOP (BOP); Allen, Joseph J.; (b)(6), (b)(7)(C), (b)(7)(F) per USMS (USMS); Braverman, Adam L. (ODAG); Sullivan, Katie (OVW); Glover, Matthew J. (CIV); Finch, Andrew (ATR); Toulou, Tracy (OTJ); Keith, Phillip E. (COPS); Snow, Corinne (ENRD); Freeman, Lindsey (OLP); Munro, Shannon L. (JMD); Purdy, Nikita (JMD); Kaplan, Jennifer E. (OVW)
Cc: Boyd, Stephen E. (OLA); Douglas, Danielle E. (OLA); McKinney, Suzanna R. (OLA); Hart, Jessica E. (OLA); Hovakimian, Patrick (ODAG); Cox, Stephen (OASG)
Subject: RE: DAG-nominee QFRs
Date: Wednesday, April 17, 2019 11:02:30 PM
Attachments: [Rosen QFRs Master Document.docx](#)
[QFR assignments.xlsx](#)
[2019.4.10_Rosen_Hearing_Transcript.pdf](#)

All,

Thank you again for your help with the DAG-nominee's Questions for the Record. We have compiled the QFRs into the attached document and assigned each question to a component for a draft response. Those designations are in red in the document. I am also attaching a spreadsheet that lists all of the questions and assignments. We have also inserted prior cleared language for some of the responses. Please review these responses and make any necessary changes.

I am also attaching the transcript from Rosen's confirmation hearing in the event that it is helpful.

Again, please let me know as soon as possible if any of the assignments are incorrect so that I can reassign them. Please send responses to me, Suzanna McKinney, and Danielle Douglas (copied here) no later than EOD Friday, April 19.

Please let us know if you have any questions or concerns.

Thanks,

Prim, Suzanna, and Danielle

From: Escalona, Prim F. (OLA)
Sent: Monday, April 15, 2019 1:27 PM
To: Gannon, Curtis E. (OLC); (b)(6); Michel, Christopher (OSG); (b)(6); Heminger, Justin (ENRD) <JHeminger2@ENRD.USDOJ.GOV>; Wiegmann, Brad (NSD); (b)(6); Burnham, James M. (CIV); (b)(6); Assefi, Omeed (CRT); (b)(6); Lucas, Daniel (JMD); (b)(6); Champoux, Mark (OLP); (b)(6); Wong, Candice (CRM); (b)(6), (b)(7)(C) Per CRM @CRM.USDOJ.GOV>; 'Wong, Norman (USAEO)'; (b)(6); 'Crowell, James (USAEO)'; (b)(6); Costigan, Michael (OJP); (b)(6); (b)(6), (b)(7)(C) per BOP (BOP); (b)(6), (b)(7)(C) per BOP; 'Allen, Joseph'; (b)(6); (b)(6), (b)(7)(C), (b)(7)(F) per USMS (USMS); (b)(6), (b)(7)(C), (b)(7)(F) per USMS>; Braverman, Adam L. (ODAG); (b)(6); Sullivan, Katie (OVW); (b)(6); Glover, Matthew J. (CIV); (b)(6); Finch, Andrew (ATR); (b)(6); Toulou, Tracy (OTJ); (b)(6); Keith, Phillip E. (COPS); (b)(6);
Cc: 'Stephen E. Boyd (OLA)'; (b)(6); Douglas, Danielle E.

(OLA) (b) (6); McKinney, Suzanna R. (OLA) (b) (6)

Hart, Jessica E. (OLA) (b) (6); Hovakimian, Patrick (ODAG)

(b) (6); Cox, Stephen (OASG) (b) (6)

Subject: DAG-nominee QFRs

Duplicative Material

