

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: I am not aware of this memorandum and have not studied this issue. Therefore, I have no basis to reach a conclusion regarding it. If confirmed, I commit to studying this issue in greater detail.

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: The Department has long been committed to ensuring that our political process is free from corruption, including by lobbyists and other advocates. I am not familiar with the specific details of this new law and have not thought in detail about whether those convicted of corruption offenses could be banned from lobbying activities. If confirmed, I would be happy to work with you and the Committee on appropriate legislation that supports the Department's mission and priorities.

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: I will uphold Second Amendment rights, as I will uphold all rights established by the Constitution. When I was the Assistant Attorney General of the Office of Legal Counsel, I concluded that the Second Amendment creates a personal right under the Constitution. My analysis drew in part on the right of self-preservation set forth in John Locke's Second Treatise of Government. I was pleased to see that *Heller* vindicated my view, and there is no question following *Heller* that the right to keep and bear firearms is protected under the Second Amendment and that this is a personal right. As I stated during my hearing, what I would look for in assessing a gun-control measure is what burden it would impose on the constitutional rights of law-abiding citizens and whether that burden has a sufficiently meaningful impact on crime to justify burdening a fundamental right. I would not favor pursuing gun-control measures that burden the Second Amendment rights of law-abiding citizens without having any meaningful impact on crime or public safety.

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: I have not studied the Ticketmaster/LiveNation consent decree and therefore do not have an opinion on the matter. If confirmed, I look forward to discussing this issue with the Antitrust Division and working with the Division to protect competition and prevent any continued anticompetitive behavior.

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: As you note, repeated illegal reentry is a serious problem that unnecessarily burdens our system. If confirmed, I can commit to working with this Committee regarding legislation that supports the Department's mission and priorities.

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: I am not familiar with the particular situation in New Orleans. But, I am generally aware that the Department has sought to require law enforcement grant recipients to provide this cooperation, and as a general matter, I believe that, where authority exists to do so, this is a common sense requirement that should be continued. If confirmed, I would expect to use lawful tools available to the Department to ensure that all jurisdictions provide the level of cooperation required by law.