

January 27, 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

Enclosed please find responses to Questions for the Record that I received from Ranking Member Feinstein, as well as Senators Grassley, Cornyn, Tillis, Crapo, Kennedy, Leahy, Durbin, Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, and Harris, following my appearance before the Senate Committee on the Judiciary on January 15, 2019.

Sincerely,

A handwritten signature in blue ink that reads "WP Barr".

William P. Barr

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: I believe that the healthcare sector is vital to Americans and that competition is an important factor in containing the costs of healthcare. I understand that, pursuant to long-standing procedures, the Department and FTC share civil enforcement responsibilities in the healthcare sector, whereas the Department has an exclusive responsibility to enforce the antitrust laws criminally. If confirmed, I will work with the Antitrust Division to ensure appropriate and effective criminal and civil enforcement to protect Americans' interests in low-cost, high-quality healthcare.

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

RESPONSE: Yes. If I am confirmed, enforcing the antitrust laws in the healthcare and pharmaceutical sectors will remain a priority for the Department of Justice.

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

RESPONSE: Yes. Because the FTC and the Department share civil enforcement responsibilities in the healthcare sector, I believe it is important to collaborate with the FTC to ensure effective and consistent enforcement of the antitrust laws in this sector.

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: Yes. If I am confirmed, enforcing the antitrust laws in the agriculture sector will remain a priority for the Department.

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: I recognize the importance of these issues, particularly in working to minimize disruption to the music industry. If confirmed, I will work with the Antitrust Division to ensure that this Committee is informed of the Division's intentions a reasonable time before it takes any action to modify or terminate the decrees.

- 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: I commit that, if I am confirmed, the Department will stand ready to provide this Committee with technical assistance on any legislative proposal regarding music licensing. If confirmed, I will work with the Antitrust Division to ensure that this Committee is informed of the Division's intentions with respect to these decrees.

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: Because I am not currently at the Department, I am not familiar with the current capacity of Residential Reentry Centers (RRC) within the Bureau of Prisons (Bureau). If confirmed, I look forward to reviewing the Bureau’s RRC capacity, needs, and funding to fully comply with the law.

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: Because I am not currently at the Department, I am not in a position to speak to the Bureau of Prisons’ justifications or to predict implementation issues. That said, my understanding is that the FIRST STEP Act states that the recalculation amendments will go into effect when the Department “completes and releases the risk and needs assessment system,” and that the Act further provides 210 days for that system to be completed. In any event, as I explained at my hearing, if confirmed, I am committed to diligently enforcing and implementing the FIRST STEP Act.

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: If confirmed, I would seek to ensure that the Department effectively implements the programs Congress funds. I support the goals of the Justice Reinvestment Initiative as described and do not at this time have

specific ideas for modifications. That said, if I am confirmed, I will work to ensure that the Justice Reinvestment Initiative, like any other congressionally funded program, is efficient and effective at achieving its goals.

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: If I am confirmed, effective and proper stewardship of taxpayer dollars will be a top priority of mine, and I would look forward to working both internally within the Department, and with the Committee, to ensure Department grant programs are streamlined and efficient.

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: I am concerned about the proliferation of dangerous new psychoactive substances entering our country. As I understand it, the existing process to schedule a substance temporarily is reactionary and not agile enough to keep up with bad actors engineering illicit substances for the express purpose of skirting our laws. If confirmed, I would be pleased to work with the Committee on legislation that would streamline the existing drug scheduling process for new synthetic analogues.

- 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: The Department of Health and Human Services (HHS) plays an important role in the research and scheduling of new substances. The

Department of Justice should work with Congress and with HHS on legislation that would streamline the drug scheduling process for new psychoactive substances, while also allowing for appropriate access to such substances for legitimate medical research.

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: Yes. If confirmed, I will review your letter and the status of the pending applications.

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

RESPONSE: Yes. I support the expansion of marijuana manufacturers for scientific research consistent with law. If confirmed, I will review the matter and take appropriate steps.

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: I am not familiar with the details of this request or with the status of any response from DOJ and HHS. If confirmed, I will look into the matter.

- b. What is the anticipated date of completion?

RESPONSE: I am not familiar with the details of this request or with the status of any response from the Department and HHS. I have no insight into the anticipated date of completion for any response from HHS or Department. If confirmed, I will look into the matter.

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

RESPONSE: I have not studied this issue closely. I am aware, however, that the FDA has approved the drug Epidiolex, which contains CBD, and that DEA has placed Epidiolex on Schedule V under the Controlled Substances Act. Epidiolex is therefore subject to different legal and regulatory restrictions than marijuana-derived CBD generally, which is listed on Schedule I.

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

RESPONSE: I have not studied this issue closely. I am aware that, as part of the most recent Farm Bill, Congress enacted new provisions that authorize the cultivation of hemp plants and the distribution of hemp-derived products, subject to certain restrictions and limitations. Products derived from hemp, including CBD, are therefore subject to different legal and regulatory restrictions than those derived from non-hemp marijuana plants under certain circumstances.

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: My understanding is that the challenges to anti-money laundering enforcement include, as you allude to, virtual currencies, lax compliance at financial institutions, and complicit financial services employees. If confirmed, I look forward to consulting with the experts within the Department, including in the Money Laundering and Asset Recovery Section of the Criminal Division, to learn more about current efforts to combat money laundering techniques and what additional tools they believe are needed.

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

RESPONSE: Please see my response to Question 11(a) above.

- 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: If confirmed, I would be happy to work with you and other Members of Congress to ensure that all necessary tools are provided to support the Department's efforts to combat money laundering.

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: I understand from news reports that President Xi agreed to schedule all fentanyl class substances in China. Such a step will ensure that China has the legal and regulatory framework to hold manufacturers and distributors of fentanyl analogues accountable. If confirmed, I will support the Administration's efforts to engage China on this issue.

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

RESPONSE: I believe we should use diplomacy, sanctions, and other forms of national power, if necessary and where appropriate, to engage China on this issue. In recent years, the Justice Department has indicted a number of Chinese nationals in relation to trafficking in fentanyl and fentanyl analogues. Additionally, in February 2018, the DEA temporarily scheduled fentanyl substances as a class on an emergency basis. I believe that

permanent class-wide scheduling of fentanyl related substances is critical to our engagement with China. The U.S. should permanently schedule analogues of fentanyl as a class, and hold China accountable to fulfilling their promise to do the same.

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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

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

RESPONSE: It is my understanding that there are more than 800,000 immigration cases pending before our nation's immigration courts, many of which involved applications for asylum. It is also my understanding that many of those cases do not come close to meeting the statutory standards to be granted asylum, and that such cases can overburden the system and cause extensive delays for legitimate claims.

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

RESPONSE: If confirmed, I will work with this Committee regarding legislation that supports the Department's mission and priorities, including improving our overburdened asylum and immigration court systems.

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: As I said at the hearing, the role of the Department of Justice is to enforce the law. I will continue to prioritize the prosecution of these and other serious criminal offenses.

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: I am committed to fully and fairly enforcing federal law, and I do not believe that law enforcement should pick and choose which laws to enforce. As I said at the hearing, sanctuary cities create numerous problems, particularly when these jurisdictions do not give the federal government information about criminal aliens they have in their custody.

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: If I am confirmed, the Department will use the lawful tools at its disposal to support the Department of Homeland Security's enforcement efforts, and to ensure that state and local jurisdictions provide the level of cooperation required by law.

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: If confirmed, I look forward to learning more about the Department's efforts to investigate and combat waste, fraud, and abuse, including potential abuse of asbestos trusts, and continuing the Department's good work in this area. I will exercise my best efforts to keep this Committee informed about these efforts through the Office of Legislative Affairs, consistent with the Department's policies and practices related to ongoing investigations and cases, as well as closed matters.

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: I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision.

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: I agree that this is an important issue. I am not familiar with this particular program. If confirmed, I look forward to learning more about this issue and the Department’s efforts.

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

RESPONSE: I have not studied these issues and therefore have no basis to reach a conclusion regarding them. If confirmed, I would be pleased to study this issue in greater detail and consult with you on these issues.

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: As I confirmed at my hearing, I will diligently enforce the False Claims Act.

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: As I testified during my hearing, it is critical that we get an effective system in place that keeps firearms out of the hands of mentally ill people who pose a danger to themselves or others. A key part of any such system are laws that allow "Extreme Risk Protection Orders" to be obtained in appropriate circumstances. At the same time, we must take steps to ensure that any laws that restrict possession of firearms by law-abiding persons, even if only temporarily, conform to constitutional rights and 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 would 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: 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.

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

QUESTIONS FROM SENATOR TILLIS

Technology and Law Enforcement

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: Although I am not fully versed in current law enforcement technologies, I generally appreciate and understand the great benefits they can provide to law enforcement and would work to support their use where appropriate and consistent with law. Because I am not familiar with the Department’s current budget and funding requests and allocations, I do not have sufficient information to commit to specific financial support from the Department for our local and state partners to expand use of these technologies. If confirmed, I look forward to learning more about this issue.

Digital Evidence in Support of Criminal Investigations

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: I am not familiar with the specific CSIS report you cite, but generally understand the importance of accessing digital evidence in criminal investigations and would support digital evidence training programs consistent with available resources. However, because I am not familiar with the Department's current budget and funding requests and allocations, I do not have sufficient information to commit to the specific steps I would take to support such training.

- 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: If confirmed, I will review the issue of support for digital evidence training along with other issues affecting public safety, and would look forward to working with the Committee.

Combatting Sexual Exploitation

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: As I noted at my hearing, Internet-based platforms and other emerging technologies that facilitate sex trafficking, prostitution, and human trafficking are a particularly abhorrent form of criminality. If confirmed, Americans can count on me examining this issue closely to learn more about the Department's current efforts and to ensure that appropriate steps are being taken to address this scourge.

- 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: Please see my response to Question 3(a) above.

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

RESPONSE: State and local investigators and prosecutors have an important role to play in addressing this terrible problem. If confirmed, I will ensure that the Department is appropriately collaborating with state and local officials to effectively pursue sexual exploitation crimes. With regard to federal enforcement, please see my response to Question 3(a) above.

- 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: Because I am not currently at the Department, I am unaware of the degree and nature of federal coordination and/or collaboration with social media companies on these issues. Given the role of Internet-based platforms in facilitating such activities, social media companies do have a responsibility to help us address the problem. If confirmed, I will ensure that the Department is appropriately working with social media companies to seek the most effective response.

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: If confirmed, I will ensure that the Department complies with any statutory requirements, including in this area.

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

RESPONSE: Because I am not currently at the Department, I am not familiar with the Department's current efforts in this area. Sex trafficking and sexual exploitation are important problems that need to be addressed and that I intend to examine closely if confirmed.

- 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: Please see my response to Question 4(b) above.

International Parental Child Abduction

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: International parental child kidnapping is a concerning issue, and I appreciate your leadership on this. If confirmed, I will examine this issue more closely and ensure that the Department is taking appropriate steps to combat it.

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: Please see my response to Question 5(a) above.

Intellectual Property

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: I am aware that the Department has identified intellectual property crime as a priority area due to the wide-ranging economic impact on U.S. businesses and, in some situations, the very real threat to the health, safety, and security of the American public. If confirmed, I look forward to examining this issue in greater depth and will ensure the Department continues to combat these significant harms.

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: I understand that the Department works with our law enforcement counterparts across the globe to ensure they are prepared to address crimes involving intellectual property, cyber intrusions, and digital evidence. In addition, prosecutors in the Criminal, Civil and National Security Divisions work closely with U.S. Attorneys' Offices throughout the country on a wide range of cases involving foreign theft of intellectual property. If confirmed, I will examine these and other efforts to ensure that the Department is effectively building relationships with foreign partners to counter foreign threats to our intellectual property.

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

RESPONSE: I appreciate your interest in this important area, which is vital to protecting American interests here and abroad. If confirmed, I look forward to working with you on ways to enhance the Department's current enforcement efforts on international IP theft.

Faith Based and Community Organization Partnerships in the Bureau of Prisons

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: As I am not currently at the Department, I have not had the opportunity to study programming capacity in the Bureau of Prisons. If confirmed, I look forward to learning more about this issue and the Bureau's programs to ensure compliance with the law.

- 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: While I am aware generally of this provision within the FIRST STEP Act, I am not currently at the Department, and I am not familiar with details regarding how this provision can best be legally effectuated by the Bureau of Prisons. If confirmed, I look forward to learning more about the provision and its implementation to ensure compliance with applicable law.

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: While I am aware generally of this provision within the FIRST STEP Act, I am not currently at the Department, and I am not familiar with the details regarding volunteer services for inmates in pre-release custody. It is my understanding that BOP program considerations that might be affected include contracts with Residential Reentry Centers as well as public safety considerations. If confirmed, I look forward to learning more about the provision and its implementation to ensure compliance with law.

Bureau of Prisons Director

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: If confirmed, I will be committed to finding high-quality candidates to serve in the Department of Justice and ensuring the Department's staffing decisions are made with integrity and without political, ideological, or any other prohibited consideration and consistent with civil service law and Departmental policies. It is my understanding that the Director position at the Bureau of Prisons has been open for some time. I believe it is important to fill this position, particularly in light of the recently-passed FIRST STEP Act, and I will make it a priority to do so.

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: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media, but I do not believe the Justice Department should operate programs aimed to cut off access to payment systems and banking services for merchants because they conduct business in politically disfavored industries.

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

RESPONSE: Yes.

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: Yes. Please also see my responses to Questions 1 and 2 above.

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.

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?
 - 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?
 - 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: I do not know what will be included in any report prepared by the Special Counsel, what form such a report will take, or whether it will contain confidential or privileged material. In the course of preparing for my hearing before the Committee, I recall having general discussions about the possibility that any Special Counsel report may include categories of information that could be subject to certain privileges or confidentiality interests, including classified information, grand jury information, and information subject to executive privilege. I do not recall any discussions regarding the use of executive privilege to prevent the public release of any such report. If confirmed, I will follow the law, Department policy, and established practices, to the extent applicable, in determining whether any confidentiality interests or privileges may apply and how they should be evaluated and asserted. If it turns out that any report contains material information that is privileged or confidential, I would not tolerate an effort to withhold such information for any improper purpose, such as to cover up wrongdoing.

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: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." *See* 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

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: Please find attached my January 14, 2019 letter to Senate Committee on the Judiciary Chairman Lindsey Graham, which answers this question.

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: As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials in both the Executive branch and Congress. For example, following the attacks of September 11, 2001, I contacted numerous officials within the administration of President George W. Bush, including officials at the White House and the Department of Justice, to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. As a more recent example, I expressed concerns to Attorney General Sessions and Deputy Attorney General Rosenstein regarding the prosecution of Senator Bob Menendez. Apart from the memorandum that I drafted in June 2018, I do not recall any other instance in which I conveyed my thoughts to the Department of Justice in my capacity as a former Attorney General in a legal memorandum.

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: As I explained in my January 10, 2019 letter to you and my January 14, 2019 letter to Chairman Graham, as a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public

officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under 18 U.S.C. § 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not just by future Presidents, but by all public officials involved in administering the law, especially those in the Department of Justice. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, 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. I discussed my views broadly with many lawyer friends; wrote the memo to senior Department officials; shared it with other interested parties; and later provided copies to friends.

To the best of my recollection, the first time anyone in the Trump administration contacted me about a potential nomination to be Attorney General was in fall 2018, months after I completed my memorandum.

To the best of my recollection, before I began writing the memorandum, I provided my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. There was no follow up from any of these Department officials, except that Solicitor General Francisco called me to say that he was not involved in the Special Counsel's investigation and would not be reading my memorandum. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views.

For further information on these issues, please see my letters of January 10 and January 14, 2019, attached and referenced above.

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: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my intent will be to be as transparent as possible while following the Department's established policies and practices.

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: The Attorney General's job is to fairly enforce the laws of the United States. On any matter I consider, I will thoroughly review the applicable law and facts and will, as appropriate, consult with relevant officials at the Department before making a good-faith decision based on the law and the facts.

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: The Department has policies in place that govern communications between the White House and the Department. If I am confirmed, I would act in accordance with Department of Justice protocols, including the 2009 Memo on

communications with the White House issued by former Attorney General Holder. Consistent with the 2009 Holder Memo, initial communications between the Department of Justice and the White House concerning investigations or cases should involve only the Attorney General, the Deputy Attorney General, or the Associate Attorney General. If I am confirmed, I will be reviewing many of the policies and practices of the Department and making adjustments as appropriate.

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: I am generally familiar with the Department’s policy with regard to open investigations and, if confirmed, look forward to more closely reviewing this and other Department policies. As a general matter, I believe the Department should refrain from commenting on ongoing investigations and cases. However, there are exceptional circumstances where it may be appropriate, consistent with Department policy, and in the public’s interest, to provide information in a public setting regarding ongoing matters before indictment or formal charge. Whether particular information related to an open investigation should be publicly disclosed would depend on the facts and circumstances of the individual case.

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: The unitary executive theory simply recognizes, as the Supreme Court has repeatedly held, that Article II of the Constitution “‘makes a single President responsible for the actions of the Executive Branch.’” *Free Ent. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 496-97 (2010) (quoting *Clinton v. Jones*, 520 U.S. 681, 712-13 (1997) (Breyer, J., concurring in judgment)). To that end, the President must have plenary control over the Executive Branch to implement his constitutional obligations, and he may remove the Attorney General, if he disagrees with the Attorney General’s decisions. If confirmed, I intend to scrupulously follow Department regulations and to allow the Special Counsel to complete his investigation.

As I made clear at the hearing, I would not countenance changing the existing regulations for the purpose of removing Special Counsel Mueller without good cause.

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?

RESPONSE: *Morrison* held that the good-cause removal restrictions on the independent counsel were constitutionally permissible because she was an inferior officer with limited jurisdiction. As the Supreme Court reiterated in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 495 (2010), *Morrison* concerned the “status of inferior officers” and the specific “circumstances” of the independent counsel statute. While, as an original matter, I thought *Morrison* was not correct, it is my understanding that the Supreme Court has not overruled that decision. If confirmed, and if the issue arose, I would need to consult with the Office of Legal Counsel and review subsequent decisions by the Supreme Court to determine whether they have any bearing on the decision.

- b. In your view, are laws requiring the President to have “good cause” before removing heads of independent agencies constitutional?

RESPONSE: Under the Supreme Court’s precedents, including *Morrison v. Olson*, the constitutionality of such restrictions would depend on facts such as the precise nature of the for-cause removal provision and the structure of the agency in question.

- 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: I am not aware of the reasons why the George W. Bush Administration requested the resignations of the U.S. Attorneys in question, but I believe it is uncontroversial that U.S. Attorneys are political appointees freely removable by the President. See 28 U.S.C. § 541(c) (“Each United States attorney is subject to removal by the President.”).

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: The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. Under the Constitution, the President’s power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. A president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate. And as I explained in my testimony, under applicable Department of Justice policy, if a President’s actions constitute a crime, he or she may be subject to prosecution after leaving office. If confirmed, I will consult with the Office of Legal Counsel and other relevant Department personnel regarding any legal questions relating to the President’s pardon authority.

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: While news media reports have identified certain statutory provisions that the Administration may be considering, I have not studied this issue sufficiently to form an opinion about their availability, which would depend in part on determinations made by various decision makers. If I were Attorney General, this is the kind of question on which I would expect to be able to rely on advice from the Office of Legal Counsel and from attorneys working at the various agencies whose programs were implicated by the statutes.

As I stated at the hearing, I do not believe that the President, as a general proposition, can ignore congressional limits on appropriations. The interplay between Congress’s spending powers and the President’s own constitutional duties is a complex issue that would have to be resolved within the bounds of the specific facts and circumstances raised by a particular question.

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: I have not studied this signing statement and therefore do not have an opinion on it. As I said at the hearing, I do not believe that torture is ever lawful.

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: I have not reviewed the Executive Summary of the Senate Select

Committee on Intelligence’s Study into the CIA’s Detention and Interrogation Program. If confirmed, I will review the study.

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?

RESPONSE: I agree that it is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to appropriately respond to all members of the Committee, consistent with the Department’s law enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department’s Office of Legislative Affairs.

- 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: The Executive Branch engages in good-faith negotiation with congressional committees in an effort to accommodate legitimate oversight needs, while safeguarding the legitimate confidentiality interests of the Executive Branch. This accommodation process has historically been the primary means for successfully resolving conflicts between the branches and has eliminated the need for an executive privilege assertion in most cases. If an assertion of executive privilege is being considered, I will follow the established process of ensuring that the Department thoroughly reviews the legal basis for the privilege claim, and if I am satisfied that that assertion of the privilege would be legally permissible, I would so advise the President in a letter that would be provided to the requesting committee at the time it is informed of the privilege assertion.

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?

RESPONSE: I know that the Department of Justice is defending certain lawsuits in which the President has been sued for alleged violations of the Emoluments Clause, but I am not aware of other issues relating to the Emoluments Clause that may be before the Department. If confirmed, I will consult with the Office of Legal Counsel and all appropriate offices within the Department, to the extent questions may arise.

- 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: I cannot make any commitments about disclosure of any existing opinions or hypothetical future opinions until I have had the opportunity to review such opinions. As a general matter, I would expect OLC to make public its opinions, on any subject, in accordance with the general practices of the Office.

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: To the best of my recollection, on or about November 6, 2018, I was contacted by the White House Counsel regarding whether I would be willing to serve as Attorney General. I indicated during that discussion that I was not then in a position to serve and instead recommended several other potential candidates. I believe I may have had follow up conversations in November with the White House Counsel about other possible candidates. At some point prior to Thanksgiving 2018, I communicated to the White House Counsel that I had reconsidered and would be willing to be considered for the position. On November 27, 2018, I participated in an interview at the White House with the White House Counsel and the President. During that interview, the President offered me the position, and I accepted. The President publicly announced his intent to nominate me on December 7, 2018 and formally nominated me on January 3, 2019.

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

RESPONSE: To the best of my recollection, my response to Question 18 above includes all interviews and related communications about my potential nomination to be Attorney General prior to my selection by the President. In addition to those

communications, I have spoken with individuals at the White House and Department of Justice about numerous issues, including paperwork and logistics, throughout the selection and nomination process for this position. Finally, I have periodically received words of support, encouragement, or congratulations from individuals I know who work at the Department of Justice.

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: To the best of my recollection, I have not discussed the possibility of recusal from the Special Counsel's investigation with anyone at the White House. After the President announced that he intended to nominate me to serve as Attorney General, I discussed with officials in the Department of Justice whether the memorandum that I drafted in June 2018 would require recusal or present a conflict of interest.

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

RESPONSE: No.

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: Congress and the courts have endorsed the view, held by multiple Administrations, that terrorists who are engaged in an armed conflict with the United States can be detained by the military as enemy combatants. While such individuals may be entitled in some contexts to challenge their detention by writ of habeas corpus, they need not be criminally prosecuted. Terrorists who have committed crimes under U.S. law can also be prosecuted in our criminal justice system, and if so, they are afforded the constitutional and statutory rights that apply in criminal proceedings. Those same rights do not apply when terrorists are held as enemy combatants.

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: The cited portion of my 2003 testimony concerned the requirement in

the Foreign Intelligence Surveillance Act (FISA) to establish probable cause that an individual is an agent of a foreign power. In 2004, Congress expanded FISA to reach foreign individuals who are engaged in international terrorism, consistent with my recommendation. I believe that provision is consistent with the Fourth Amendment.

In terms of the application of the Fourth Amendment more generally to foreign persons, my understanding is that the answer might depend on a number of factors, including the lawfulness of the non-citizen's presence in the country and the non-citizen's connections to the country. *See generally United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990). The position of the Department in a particular case will be based on an assessment of the specific facts and the law.

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

RESPONSE: The President has authority to conduct “domestic security surveillances” consistent with the requirements of the Fourth Amendment. *United States v. U.S. District Court*, 407 U.S. 297 (1972) (*Keith*). In that case, the Court held that there is no general exception to the Warrant Clause of the Fourth Amendment for domestic security surveillance, while expressing no opinion as to the issues that would be presented with respect to surveillance of the activities of foreign powers or their agents. After *Keith* was decided, a number of courts of appeal determined that a foreign intelligence exception exists to the Fourth Amendment’s Warrant Clause. *See, e.g., United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980); *United States v. Buck*, 548 F.3d 871 (9th Cir. 1977). In 1978, Congress enacted the Foreign Intelligence Surveillance Act, in addition to the previously enacted Wiretap Act and other provisions of Title 18 of the U.S. Code, to address domestic collection for foreign intelligence purposes and for criminal investigations.

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: Collection of telephone metadata is regulated by provisions of the USA Freedom Act and other statutes, which address the circumstances under which the government can compel the collection of telephone metadata within the United States and the means by which the government can collect such records from telecommunications providers.

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.

RESPONSE: The President must follow the surveillance laws consistent with his constitutional responsibilities. I am not aware of any aspect of current law that is inconsistent with those responsibilities.

- 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.

RESPONSE: The President must follow the surveillance laws consistent with his constitutional responsibilities. I am not aware of any aspect of current law that is inconsistent with those responsibilities.

- 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: FISA provides that it and the authorities of Title 18, or any other express authorization by statute, are the exclusive means for domestic electronic surveillance, as that term is defined in FISA. See 50 U.S.C. § 1812 (“Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.”).

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: If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. Though I am not familiar with the Department’s policies regarding the disclosure to Congress of ethics advice or recusal decisions, my intent will be to be as transparent as possible while following the Department’s established policies and practices.

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: If confirmed, I commit to abide by the terms of my ethics agreement with the Department of Justice.

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?

RESPONSE: *Roe v. Wade* is precedent of the Supreme Court and has been reaffirmed many times. I understand that the Department has stopped, as a routine matter, asking that *Roe* be overruled.

- b. Do you believe that the Due Process Clause of the Fourteenth Amendment

includes a right to privacy?

RESPONSE: The Supreme Court has repeatedly held that the Due Process Clause of the Fourteenth Amendment contains a right to privacy.

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: Respect for precedent is critical to the rule of law. At the same time, the Supreme Court has made clear that *stare decisis* is not an inexorable command. The Court has explained that deciding whether to overrule precedent requires weighing (among other factors) whether a prior decision is correctly decided, well-reasoned, practically workable, consistent with subsequent legal developments, and subject to legitimate reliance interests. The Justice Department should take all of those factors into account when deciding whether to argue that the Court should overrule precedent.

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?

RESPONSE: In the Reagan and Bush Administrations, the Solicitor General routinely asked the Supreme Court to overrule *Roe v. Wade*. But at that time, *Roe v. Wade* was less than 20 years old.

Since then, the Supreme Court has reaffirmed *Roe* in a number of cases, and *Roe* is now 46 years old. Moreover, a number of Justices have made clear they believe that *Roe* is settled precedent of the Supreme Court under *stare decisis*.

In addition, the Department has stopped routinely asking the Court to overrule *Roe*. I think the issues in abortion cases today are likely to relate to the reasonableness of particular state regulations, and I would expect the Solicitor General will craft his positions to address those issues. At the end of the day, I will be guided by what the Solicitor General determines is appropriate in a

particular case.

- b. Will you commit to ensuring that the Department does not seek ways, short of overturning *Roe*, to limit reproductive rights?

RESPONSE: The Department of Justice will enforce existing law.

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: Please see my responses to Question 31 above.

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: To the best of my recollection, I have not discussed my views on *Roe v. Wade* with anyone in the Trump Administration apart from general discussions with Department personnel assisting me in preparing for my hearing and drafting these answers.

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 protesters from conducting demonstrations at clinics. The Justice Department again intervened on behalf of the protesters.

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: As Deputy Attorney General and, later, as Attorney General in the administration of President George H.W. Bush, I had broad supervisory responsibilities over the Department of Justice. My involvement in *Women’s Health Care Services v. Operation Rescue* was discussed in detail during my 1991 confirmation hearing to be Attorney General. My colloquy with Senator Edward Kennedy on this issue can be found at pages 29-34 of the November 12, 1991 transcript, which I have attached for your reference. To the best of my recollection, I did not play a role in formulating the Department of Justice’s position in *Bray v. Alexandria Women’s Health*.

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: I am not yet familiar with the current specific operations of immigration courts in cases involving minors, but it is my general understanding that all respondents in immigration proceedings, including minors, are afforded protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. I also understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation. It is the longstanding policy of the Department of Justice not to comment on pending matters,

and thus it would not be appropriate for me to comment on this matter.

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: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units but my understanding is that the Department of Homeland Security makes the decision as to whom they apprehend, whom they refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

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: If confirmed, it will be my job as Attorney General to enforce immigration laws as they are enacted by Congress and to support policies set by the President consistent with the law. As to consideration of any hypothetical policies, I would look at the individualized facts of a situation and follow the law in determining what to do. As I stated above, President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

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: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter. I expect that the Department of Homeland Security and the Department of Justice will comply with applicable legal requirements regarding notice and the service of documents in immigration proceedings.

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: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

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: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

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: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more about it.

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: I am not familiar with this specific issue, but if confirmed, I will review the policies and procedures at the Department and make changes as appropriate. I am committed to using all the tools at the Department’s disposal to ensure that firearms do not end up in the hands of dangerous people prohibited by law from having them.

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: I have no knowledge of the facts and circumstances surrounding the tragedy at the Emanuel AME church beyond what I have seen reported in the news media and the testimony given on Day 2 of my Nomination Hearing. I also have not studied whether changes to the three-day waiting period are advisable. If confirmed, I will review this issue along with other issues affecting public safety.

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: I have not studied this specific issue and am not currently in a position to opine. As I noted in my testimony, even before the Supreme Court decided the *Heller* case, I had worked on Second Amendment issues and believed that the Second Amendment confers an individual right under the Constitution. Of course, that issue has now been settled by the Supreme Court, and applied to the states as well. The question of whether the Second Amendment, or any other provision of the Constitution, would require one state to recognize another's concealed carry permit is one I have not considered.

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: If confirmed, I would be pleased to review any legislation on this issue.

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: I am committed to using all the tools at the Department’s disposal to ensure that firearms do not end up in the hands of dangerous people prohibited by law from having them. I am not familiar with the specific issues you raise with regard to federal assistance to local officials in these matters, but if confirmed, I look forward to working with you and the Committee on this important issue.

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: If I am confirmed, addressing sexual assault will continue to be a priority for the Department of Justice. It is my understanding that the Department has made combatting sexual assault a priority for grant funding, implemented statutory set-asides for projects focused on improving responses to sexual assault, and administered grant programs dedicated exclusively to providing sexual assault services. I look forward to learning more about the important work the Department is doing in the field.

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: I recognize the importance of the Violence Against Women Act. If confirmed, I would be pleased to work with the Committee on reauthorization legislation that supports the Department’s mission and priorities.

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: I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, and, as I stated in my written testimony, would make

these issues a priority for the Department if confirmed. The Department of Justice is bound to enforce the laws that Congress enacts, subject to the authoritative interpretations of the Supreme Court. If confirmed, I will be committed to working with Congress regarding legislation that supports the Department’s mission and priorities in this important area.

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: I have not studied the issues raised by this question in great detail and am not familiar with data and statistics on this matter. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

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: States have enacted various photographic voter identification laws, and those laws vary from state to state. Generally, the question of which forms of identification state and local officials may accept at the polling place is a question of state law, not federal law. Additionally, questions regarding the removal of individuals from voter registration lists based upon a discrepancy between a voter registration

form and a photographic identification are generally questions of state law, not federal law.

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: As I stated at my hearing, if confirmed, I will review the Department's position in *Texas v. United States*. I intend to engage in a thorough review, which will include receiving input from individuals throughout the Department and from other relevant agencies within the federal government.

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: I am not familiar with the Department's decision to close the San Francisco field office of the Environment and Natural Resources Division, and therefore am not in a position to comment or make a commitment at this time. I am committed to the fair and evenhanded enforcement of federal environmental laws, in California and in all states.

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: If confirmed, I will enforce all federal civil rights law enacted by Congress, including the ADA.

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: As I stated at my hearing, I recognize that there are numerous dimensions to the drug problem, and the job of the Department of Justice is primarily enforcement, while other agencies have a role to play as well in addressing the issue. While I am not familiar with the Department’s current budget and funding requests, if confirmed, I look forward to reviewing the Department’s resource allocations, needs, and funding proposals.

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: I believe that the Federal Government should address whether to legalize marijuana the right way, which is through the legislative process. An approach based solely on executive discretion fails to provide the certainty and predictability that regulated parties deserve and threatens to undermine the rule of law. If confirmed, I can commit to working with the Committee and the rest of Congress on these issues, including any specific legislative proposals. As I have said, however, I do not support the wholesale legalization of marijuana.

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: I am not familiar with the details of these applications or the status of their review. If confirmed, I can commit to reviewing the matter. As stated above in response to Senator Grassley’s question, I support the expansion of marijuana manufacturers for scientific research consistent with law.

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: The Department has long been a leader in supporting the development and expansion of drug courts, and would continue to serve in that role if I am confirmed. I am not familiar with the Department’s current budget and funding requests and allocations. If confirmed, I will study this issue and would be pleased to work with Congress on funding priorities.

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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

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?
 - 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: If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. I believe the ethics review and recusal process established by applicable laws and regulations provides the framework necessary to promote public confidence in the integrity of the Department’s work, and I intend to follow those regulations in good faith.

Though I am not familiar with the Department’s policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be

as transparent as possible while following the Department's established policies and practices.

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?
 - 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?
 - 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?
 - 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: My November 2017 comments to the New York Times were based on media reporting regarding the Uranium One case and the Special Counsel’s investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. Politics should never be part of the analysis of whether to launch a particular criminal investigation or

prosecution. I am not aware of the extent to which the Uranium One case has been pursued by the Department of Justice, but as I noted during my hearing, it is my understanding from public reporting that U.S. Attorney John Huber may be looking into the matter.

Finally, although it is not inappropriate per se for the President to express a view on the need for a criminal investigation, the Department must always ensure that any investigation is appropriate on the law and the facts before moving forward.

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: As I described in my testimony, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. During the meeting, the President reiterated his public statements denying collusion and describing the allegations as politically motivated. I did not respond to those comments. The President also asked my opinion of the Special Counsel. As I testified, I explained that I had a longstanding personal and professional relationship with Special Counsel Mueller and advised the President that he was a person of significant experience and integrity.

On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation, and he did not ask me about what I would do about anything in the investigation.

On December 5, 2018, following President Bush's funeral, President Trump asked me to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel's investigation. The President has not asked me my views about any aspect of the

investigation, and he has not asked me about what I would do about anything in the investigation.

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: As I noted during my confirmation hearing, I understand that the Department has policies and practices governing the use of law enforcement tools, including subpoenas, court orders, and search warrants, to obtain information or records from or concerning members of the news media in criminal and civil investigations. I take these policies seriously and did not mean to suggest I would deviate from the existing restrictions. As I mentioned, in light of the importance of the newsgathering process, as well as the First Amendment, I understand that the Department views the use of tools to seek evidence from or involving the news media as an extraordinary measure, using such tools only after all reasonable alternative investigative steps have been taken, and when the information sought is reasonably required for a successful investigation or prosecution.

- 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: As I stated many times throughout my hearing, every enforcement decision at the Department of Justice must be based strictly on the laws and the facts, not on partisan, political, or personal interests. If confirmed, I will ensure that the Department abides by this principle.

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: As I wrote in the op-ed, “[w]hile an official is always free to resign if she does not agree with, or has doubts about, the legality of a presidential order,” the Attorney General has “no authority and no conceivable justification for directing the department’s lawyers not to advocate the president’s position in court.”

- 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: As I’ve stated elsewhere, one role of the Attorney General is to serve as a legal and policy adviser to the President. Indeed, that is one of the roles that Congress has envisioned for the Attorney General since the Judiciary Act of 1789. If the Attorney General does not support a policy, he can also press his case with the President.

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: As I explained in my opening statement, we are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity. The quote from the 1990s to which you refer was part of a larger conversation in which I was discussing the Department of Justice’s policies to combat crime, and Mr. King asked “[w]hat kind of statement is that about our society?” After that quote, I continued to note that “the fact remains that if you commit a crime in the United States your chances of going to prison are the same as in Canada and the United Kingdom. So we’re not more punitive than other countries. The problem that we have is that we have a higher crime rate. But still, when all is said and done, we have less than 1 percent of the population that’s committing most of the predatory violence in our society, and they’re repeat offenders.” As I have said in this and other contexts, the determinants of higher crime rates are complex and include many factors. During my tenure as Attorney General, the Department fought crime and directed that fight at what we believed were the root causes of crime. In the intervening years, I believe it can be demonstrated that our nation has brought down the crime rate due to many of these policies, all while diversity has increased in our country. I do not believe that our nation’s diversity led to increased crime.

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?
- 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: When I was Attorney General, violent crime had been surging throughout the United States. During my time as Attorney General, the Department implemented a concept called “Weed and Seed.” This program focused on removing violent criminals and repeat offenders from high-crime areas while delivering vital social services to improve neighborhoods in partnership with local communities. This program, among other enforcement actions, helped reduce crime rates and was an effective strategy for controlling crime. By 2017, the violent crime rate was only a quarter of what it was in the early 1990s. I continue to believe that this, and other similar programs, was an effective strategy for controlling crime.

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: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement.

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: The point I was raising in 2001 was that in combatting transnational drug trafficking organizations (DTOs), we should always evaluate, based on all the facts and circumstances, how we can most effectively neutralize a specific threat being posed to the United States and our citizens, consistent with our laws and Constitution. Extradition and prosecution in the United States of drug traffickers, including senior DTO leaders, have of course played a critical role in furthering American security and safety.

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: Because this issue is in active litigation, it would not be appropriate for me to comment on it specifically. I am committed to ensuring that the Department faithfully enforces the immigration laws enacted by Congress and supports policies set by the President consistent with the law.

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: In my experience, when the Office of Legal Counsel reviews proposed executive orders, it seeks, to the greatest extent possible, to verify the factual and legal predicates for the proposed action, relying upon the experience and expertise of others in the Executive Branch.

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: The Administration has deemed enforcement of immigration-related offenses a priority. Immigration offenses should be considered for prosecution just as any referral from a law enforcement partner would be considered. As to the remainder of this question, I cannot speculate on a hypothetical question about how I would respond to such a situation, particularly since, as a private citizen, I have little knowledge of particular facts relevant to Department prosecutorial decision-making. As in all matters, I would look at the individualized facts in determining an appropriate course of action.

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: In *Carpenter*, the Supreme Court carved out a narrow exception to the longstanding third-party doctrine for cell-site location information possessed by the service provider. That decision is now the law, and I am committed to following it if I am confirmed as Attorney General.

- 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: I cannot speculate on a hypothetical question. As in all matters, if confirmed, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining, in consultation with the Solicitor General, the appropriate legal position in any particular case.

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: This question does not accurately convey my views as expressed in the article. If confirmed, I would faithfully enforce federal laws that protect LGBTQ individuals against discrimination.

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: If I am confirmed, I will enforce all federal laws, including the 2013 reauthorization of VAWA. It is my understanding that VAWA’s grant programs contain a number of provisions designed to ensure that services reach vulnerable victims, including funding for outreach and services to underserved populations, culturally specific victim services, specialized programming for children and youth, and tribal governments’ strategies to combat violence against Native women. I am firmly committed to ensuring that VAWA programs, and the funds made available by Congress, are employed in the most effective manner possible in furtherance of their stated missions.

- 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: Then, as now, the U.S. Attorneys were primarily responsible for prosecuting serious crimes in Indian country. In my first tenure as Attorney General, I relied on the Native American Issues Subcommittee (NAIS) of the Attorney General Advisory Committee regarding matters concerning Indian country crime. I will look to the NAIS again, as well as the Office of Tribal Justice, to ensure that prosecution of crime in Indian country continues to be a priority at the Department. I also support innovative projects such as the Office on Violence Against Women’s Tribal Special Assistant US Attorneys program, which encourages joint tribal and federal prosecution of domestic violence and sexual assault offenses.

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

RESPONSE: I would be very interested in visiting Indian country. If confirmed, I will work with relevant components at the Department, including the Office of Tribal Justice and the Office of Violence Against Women, to determine an appropriate time and place for a visit.

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: I have not studied this question in any detail. If confirmed, and if the matter came before the Department, I would likely consult with the Office of Legal Counsel on the matter.

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?
- 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: I have not studied the issues raised by this question in great detail and therefore am not familiar with data and statistics on this matter. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

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.
- 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?
- 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: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment.

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

RESPONSE: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment. Moreover, I am not familiar with the circumstances referenced in your question and therefore am not in a position to comment or make a commitment at this time.

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?
 - 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: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter.

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?
- 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: I am not yet familiar with the current specific operations of immigration courts in cases involving minors, but it is my general understanding that all respondents in immigration proceedings, including minors, are afforded protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. I also understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation. It is the longstanding policy of the Department of Justice not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

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: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units, and therefore, I am not in a position to comment on its deterrent effects.

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

RESPONSE: If confirmed, it will be my job as Attorney General to enforce immigration laws as they are enacted by Congress and to support policies set by the President consistent with the law. I cannot speculate on a hypothetical question about future policy decisions made “under any circumstances.” President Trump’s June 20, 2018, Executive Order directed that families

should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

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: I have no knowledge of the facts and circumstances surrounding the proposal you mention beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter. If confirmed, it will be my job as Attorney General to enforce asylum laws as they are enacted by Congress and support policies set by the President consistent with the law.

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: I discussed these issues in my testimony and disagree with Judge Johnson’s characterization. I have no knowledge of these assertions relating to current conditions, and therefore, am not in a position to comment on this matter—particularly insofar as it relates to the operations of another department in the Executive Branch.

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: It would not be appropriate for me to speculate on particular responses to a hypothetical situation. As in all matters, I would look at the facts and follow the law and any policies of the Department in determining what the appropriate steps might be.

- 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: The Supreme Court has the final word on the interpretation of the Constitution. As I stated at my hearing, I am perfectly fine with the law as it is with respect to same-sex marriage, but accommodation of religion is also necessary.

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: If confirmed, it will be my goal to be as transparent as possible, consistent with Department policies and practices, applicable laws and regulations, and recognized Executive Branch confidentiality interests. I will ensure that all applicable Freedom of Information Act laws and regulations are properly followed and fully enforced.

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

RESPONSE: As I mentioned at my confirmation hearing, if I am confirmed, I will ensure that all political considerations, including those you mention, will play no role in the Department's law enforcement activities.

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: Yes, the holding in *Boumediene* is binding Supreme Court precedent that the Department of Justice must follow.

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: Yes, the holding in *Hamdan* is binding Supreme Court precedent that the Department of Justice must follow.

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: I support the use of both Article III courts and military commissions, as appropriate, for prosecuting perpetrators of terrorism against the United States. In deciding which forum to use in any particular case, the government should evaluate all the facts and circumstances and the law to determine which options are legally and practically available and best serve our national security interests.

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: I would be pleased to work with the Committee on these issues.

- 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: Accurate scientific and forensic analysis is important to ensuring and maintaining the integrity of our criminal justice system. I am unfamiliar with the details surrounding the FBI's hair analysis review. If confirmed, I look forward to learning more about this important issue.

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: As I stated in my June 8, 2018 memorandum and explained in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, my memorandum was narrow in scope. It was premised on an assumption based on public accounts – which the memorandum acknowledged may be incorrect – that the Special Counsel's basis for questioning the President was that the firing of former FBI Director Comey constituted obstruction under a specific statute – namely, 18 U.S.C. § 1512(c). In other words, the memorandum assumed, for purposes of analysis, that the Special Counsel's sole predicate for interviewing the President was the single obstruction theory that it was addressing. The memorandum did not address whether the President could be questioned under any of the other possible obstruction theories that have been publicly discussed in connection with the Special Counsel's investigation, or any other theories of liability the Special Counsel may be pursuing.

After drafting the memorandum, I provided copies to several officials at the Department of Justice who I thought would be in a position to assess whether it was actually relevant to the Special Counsel's work, including Deputy Attorney General Rosenstein, who by law at the time was charged with overseeing the Special Counsel. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. As I have stated, I sent a copy to the President's lawyers and spoke with them to explain my views. I do not know what impressions they had regarding my views or what, if anything, they did with my memorandum after receiving it.

As I stated during my hearing before the Committee, I remain in the dark regarding the specific facts and legal theories currently at issue in the Special Counsel's investigation. If confirmed, I will approach the investigation with an open mind as to all issues and will make any decisions based on the relevant law and the facts at the time.

- 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: If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

- 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: Though I am not familiar with the Department’s policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department’s established policies and practices, applicable rules and regulations, and recognized Executive Branch confidentiality interests.

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: While I do not recall specific recusal decisions I made for myself at that time, I have no recollection of declining to follow ethics advice I received about any recusals.

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: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special

Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, if confirmed, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

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

RESPONSE: The regulations governing public discussion of a Special Counsel's declination decisions are discussed above in my response to Question 4(a). In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

- 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: Please see my responses to Questions 4(a) and 4(b) above.

- 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: Please see my response to Question 4(a) above.

- 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: Please see my response to Question 4(a) above.

- 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: Although I have not studied this issue in detail, my understanding is that the October 16, 2000 opinion by the Office of Legal Counsel remains operative at the Department.

- 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: I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, if confirmed, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

- 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: As I stressed repeatedly in my testimony, I believe that it is very important that the public and Congress be informed of the results of the Special Counsel's work. My goal will be to provide as much transparency as I can consistent with these regulations, applicable law, and the Department's longstanding practices and policies.

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: I agree with then-CIA Director Pompeo's statement.

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: Yes.

- 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: I would consult with Special Counsel Mueller and other Department officials about the appropriate response to such a request in light of the Special Counsel's findings and determinations at that time.

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?
 - 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?
 - 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: The Department's investigations and prosecutorial decisions should be made based on the facts, the applicable law and policies, admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and should be made free of bias or inappropriate outside influence.

I believe that it is very important that the public and Congress be informed of the results of the Special Counsel's work. My goal will be to provide as much transparency as I can consistent with the law, including the Special Counsel regulations discussed in my prior answers, and the Department's longstanding practices and policies.

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: As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials in both the Executive branch and Congress. For example, following the attacks of September 11, 2001, I contacted numerous officials within the administration of President George W. Bush, including officials at the White House and the Department of Justice, to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. As a more recent example, I expressed concerns to Attorney General Sessions and Deputy Attorney General Rosenstein regarding the prosecution of Senator Bob Menendez. Apart from the memorandum that I drafted in June 2018, I do not recall any other instance in which I conveyed my thoughts to the Department of Justice in my capacity as a former Attorney General in a legal memorandum.

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: As I testified during my hearing before the Committee, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. I did not reference this meeting in my June 2018 memorandum because I did not believe that it was relevant to my legal analysis.

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: My November 2017 comments to the New York Times were based on media reporting regarding the Uranium One case and the Special Counsel’s investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. To the best of my recollection, I used the term “so-called” and employed quotation marks when referring to “collusion” because, as many lawyers have observed, “collusion” is an informal, colloquial term that does not refer to a specific federal crime.

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

RESPONSE: To the best of my recollection, I used quotation marks when referring to “obstruction” in the subject line of my June 8, 2018 memorandum because I was using the term as a shorthand for the phrase “obstruction of justice.”

- 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?
 - 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?
 - 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: If confirmed, I will consult with the Department’s career ethics officials, review the facts at the time, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

My understanding is that the basis for Attorney General Sessions’ recusal was 28 C.F.R. § 45.2, which generally prohibits any Department employee from participating in a criminal investigation or prosecution if he has a “personal or political relationship with . . . any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; . . . or any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.” I do not know all the facts, but I have stated that I believe he probably reached the correct result under the regulation.

I am not familiar with the specific facts relevant to Acting Attorney General Whitaker’s recusal decision and therefore am not in a position to comment on it.

If confirmed, it will be my goal to ensure that the public has the utmost confidence in the integrity of the Department’s law enforcement activities.

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: Neither Members of Congress, the public, nor I know all of the facts. That is why I believe that it is important that the Special Counsel be allowed to complete his investigation.

As I testified at the hearing, President Trump has repeatedly denied that there was collusion. It is understandable that someone who felt like he or she was being falsely accused would describe an investigation into him or her as a “witch hunt.”

If confirmed, I will ensure that the Special Counsel is allowed to finish his work, and that all of the Department’s investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence.

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: I do not have complete records reflecting all of the clients that I have represented over the course of my four-decade legal career. After leaving the Department of Justice in 1993, I worked in-house for a single U.S. corporation until 2008. Since then, I have represented a handful of non-Russian clients as a private attorney in connection with matters having nothing to do with Russia. To the best of my recollection, these clients are reflected in the questionnaire that I submitted to the Committee. Prior to my last service at the Department of Justice 30 years ago, so far as I recall, and based on the records I have been able to access, I did not personally represent any Russian nationals or corporations organized under the laws of Russia while practicing law as a private attorney.

In approximately 1980, the federal judge for whom I clerked introduced me to someone I understood to be a consular officer from the Soviet Embassy, and I subsequently had several lunches with him at the request of the FBI. I debriefed the FBI following each meeting. This matter has been included in all of my subsequent background investigations. Other than that, to the best of my recollection and knowledge, I have not had dealings with the Russian government or anyone I understood to be a “Russian oligarch.”

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: Yes. That characterization is consistent with the way Presidents and Congress have understood the Attorney General’s role since the Founding. Since the Judiciary Act of 1789, the Attorney General has been charged with providing opinions and advice on matters of law to the President and the cabinet. Of course, the President may also have other lawyers that serve the office of the President (such as the White House Counsel) as well as lawyers that serve him in his personal capacity.

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?
- b. Is it appropriate for an Attorney General to “change the rules” to help the political campaign of the President who appointed him?
- 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: The actions referenced above and my discussion of those actions was appropriate for reasons that I explained at the hearing. As I discussed, the Attorney General plays three general roles within the Executive Branch. The first role is as the enforcer of the law; as to that role, the Attorney General must keep the enforcement process separate and free from political influence. The second role is as a legal advisor; as to that role as well, the Attorney General must provide legal advice that reflects what the Attorney General believes is the correct answer under the law. The third role is a policy role, which involves setting legal and law enforcement policy, including as it bears on immigration issues. The Attorney General is a political subordinate of the President, and, when acting in that third role, the Attorney General may propose and pursue legal policies that are in furtherance of the President’s agenda.

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: In this portion of the interview, I was emphasizing the importance of utilizing the government’s prosecutorial power responsibly. To illustrate the point, I highlighted a case involving former Senator Charles Robb as one “where adult supervision prevailed.” Immediately after making the statement quoted above, I noted that it was “an overstatement to dramatize a point.” Although I have not been in the Department for many years, I believe the vast majority of men and women of the Department of Justice, whether they be career employees or political appointees, set aside personal political preferences to ensure the rule of law is enforced fairly and free from improper political influence. If confirmed, I will work to ensure politics plays no role in law enforcement decisions at the Department.

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: No. I met with members of the Committee from both parties prior to my confirmation hearing and will continue to meet with Senators from both parties following my hearing. If confirmed, I look forward to working with all Members of Congress, regardless of party affiliation.

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: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information needs, including the submission of hearing testimony, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will endeavor to see that the Committee's needs are appropriately accommodated and its rules followed.

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: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information and oversight needs, including the submission of answers to written questions, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will work with the relevant Department components, including the Office of Legislative Affairs, to see that the Committee's requests receive an appropriate response.

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: If I am confirmed, I will work with relevant Department components to ensure the Department implements the FIRST STEP Act and to determine the best approach to implementing the Act consistent with congressional intent.

- 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: It is important that the Bureau of Prisons is funded at a level that allows it to effectively discharge all of its duties, including implementation of the FIRST STEP Act. If I am confirmed, I will work with the President and the Office of Management and Budget to ensure that such funding is requested in the President’s budget and will work with Congress to see that such funding is provided.

- 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: If I am confirmed, I will work with relevant Department components to ensure the Department implements the requirements of federal statutes, including the FIRST STEP Act, consistent with the bounds set by the Antideficiency Act.

- 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: Section 402(a) of the FIRST STEP Act broadens the class of defendants who are eligible for safety-valve relief. Section 402(b) provides that the Act’s safety-valve amendments “shall apply only to a conviction entered on or after the date of enactment of this Act.” If I am confirmed, I will ensure that

prosecutors receive implementing guidance for pending cases that is consistent with the applicability provision in the Act.

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: If confirmed, I will be committed to fully and fairly enforcing the law, including relating to fraud and white collar crime. I also believe that appropriate prosecutorial discretion plays an important role in all types of prosecutions. As I noted at my hearing, I believe my prior experience overseeing the Department’s aggressive response to the savings and loans crisis demonstrates that I will not shy away from prosecuting corporate fraud or other white collar crimes, where appropriate.

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

RESPONSE: No. As I explained at my hearing, I care deeply about the rule of law. Laws should be evenly applied and enforced. The American people must know that the Department will treat all people fairly based solely on the facts and the law and an evaluation of each case on the merits.

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: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in

effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement. During my time as Attorney General, the Department of Justice implemented “Weed and Seed.” This program focused on removing violent criminals and repeat offenders from high-crime areas while delivering vital social services to improve neighborhoods in partnership with local communities. This program, among other enforcement actions, helped reduce crime rates and was an effective strategy for controlling crime.

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

RESPONSE: Please see my response to Question 24(a) above.

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

RESPONSE: Yes.

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: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement. As I said at my hearing, I will diligently implement the FIRST STEP Act, which seeks to address some of what you describe.

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: A comprehensive response to any drug epidemic should involve multiple lines of effort. This Administration has a three-pronged strategy to combat the opioid epidemic: prevention and education; treatment and recovery; and enforcement and interdiction. These efforts should be complementary and mutually reinforcing. I agree that we cannot incarcerate our way out of the opioid epidemic, but I also think that law enforcement plays a critical role in protecting public safety and reducing access to deadly drugs. If confirmed as Attorney General, I will ensure that the Justice Department continues to prioritize the prosecution of significant drug traffickers, rather than drug users or low-level drug offenders. And, as I testified at my hearing, I will work with Congress to implement the FIRST STEP Act.

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: I firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. It is my understanding that the Department’s current charging policy allows prosecutors the discretion to deviate from the general requirement of charging the “most serious, readily provable offense” in cases where the prosecutor believes it is in the interest of justice to do so. As I noted in my testimony, if confirmed, I will not hesitate to assert myself - either with regard to the overall policy or in any particular case - if I believe justice is not being served.

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: As I am not currently at the Department, I am not familiar with the details of staffing at the Bureau of Prisons. It is my general understanding that all staff working in an institution are considered correctional workers first and expected to supervise inmates. As for the concept of augmentation, other than what I have garnered from news media reports about this issue, I am not directly familiar with the Bureau’s staffing and current budget requests. If confirmed, I look forward to reviewing the Bureau’s resource allocation, staffing needs, and practices.

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

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more about the BOP’s staffing situation and any impact it may have on safety and security.

- 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: I share your concern about the impact the lapse in appropriations has had on Federal employees. It is my understanding that Congress has now passed, and the President has signed, legislation to restore appropriations for the Department of Justice and other federal agencies.

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: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units but my understanding is that the Department of Homeland Security makes the decision as to whom they are going to apprehend, whom they are going to refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump’s June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien’s entry.

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

RESPONSE: Please see my response to Question 29(a) above.

- 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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matter, and thus it would not be appropriate for me to comment on this matter.

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: I cannot speculate on how I would hypothetically respond to future, unknown recommendations on any matter. If confirmed, I look forward to working closely with the Office of Inspector General on this and other matters and will certainly strive to implement recommendations as appropriate.

- 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: Without having additional information beyond what has been reported in the news media, I am not in a position to comment on this statement. President Trump’s June 20, 2018 Executive Order directed that families should

be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

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: I have not had the opportunity to study this statement and, as a private citizen, am not familiar with all the facts and details of the policies of the Department of Homeland Security. I therefore do not have a basis for commenting on this statement.

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: I have not had the opportunity to study the policy beyond what has been publicly reported in the news media and would therefore not be in a position to comment on this matter.

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: I am generally aware that the immigration court backlog has increased since 2008 but also that immigration courts last year were completing more cases than at any other time in recent years. I do not know whether the backlog has worsened during the government shutdown, though I understand that immigration judges have continued to adjudicate cases of detained aliens.

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

RESPONSE: It is my general understanding that all respondents in immigration proceedings, including minors, are afforded due process protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. Otherwise, I understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation, and it would not be appropriate to comment further.

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: As the Attorney General, Deputy Attorney General, and Assistant Attorney General for the Office of Legal Counsel, I was present for many discussions and meetings within the Department of Justice or other executive branch offices on a wide range of issues and matters. Although I do not recall specifics, it is possible that I advised on legal issues related to these policies.

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

RESPONSE: The President was responsible for setting policy with respect to refugee admissions. In my various roles at the Department of Justice during President Bush's Administration, I worked to ensure that the President's admissions policies were consistent with applicable law. Although I do not recall specifics, it is possible that I advised on legal issues related to these policies.

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: I have not considered the admissions ceiling established for Fiscal Year 2019 and thus am not in a position to comment on it at this time.

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: I respectfully disagree with the premises of this question. In any event, if confirmed, the oath I will take will be to protect and defend the Constitution of the United States, and I will continue to honor that oath. The American people elected President Trump using the procedures prescribed by our Constitution. And Article II of the Constitution vests the entirety of “the executive power ... in a President of the United States of America.” In other words, the Supreme Court has said, “Article II ‘makes a single President responsible for the actions of the Executive Branch.’” *Free Ent. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 496-97 (2010) (quoting *Clinton v. Jones*, 520 U.S. 681, 712-13 (1997) (Breyer, J., concurring in judgment)). And “[t]he Constitution that makes the President accountable to the people for executing the laws also gives him the power to do so. ... Without such power, the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else. Such diffusion of authority would greatly diminish the intended and necessary responsibility of the chief magistrate himself.” *Id.* at 513-14 (internal quotation marks omitted).

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

RESPONSE: I stand by my statement, which reflects the way the Founders of our Constitution and the Supreme Court have long viewed the President’s role in the Executive Branch. I cannot improve upon the words of former Attorney General and Supreme Court Justice Robert Jackson, who observed that “Executive power has the advantage of concentration in a single head in whose choice the whole Nation has a part, making him the focus of public hopes and expectations. In drama, magnitude and finality his decisions so far overshadow any others that almost alone he fills the public eye and ear.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 653 (1952) (concurring opinion).

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

RESPONSE: Please see my responses to Questions 36(a) and 36(b) above.

- 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: I have confidence in the Department of Justice and the Office of Legal Counsel, and I believe that they will properly discharge their responsibilities to the Constitution, the law, the Executive Branch, and the Office of the President. As I stated in my confirmation hearing, “I love the Department ... and all its components. ... I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I’d like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity. ... And I feel that I’m in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I’m going to do what I think is right.” Moreover, as I explained in a speech I gave at Cardozo law school on November 15, 1992: “In my view, the President has a responsibility to his office to advance responsible positions in law. Ultimately, if you attempt to push too hard—even as a matter of litigation risks—and take legal positions that clearly will not be sustained, or that are not responsible and reasonable legal positions, you will lose ground. That certainly was the consequence of the Steel Seizure Case.”

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?
- 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: As a general matter, Article II, Section 2 of the Constitution grants the President the unqualified power to “grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.” Generally, Presidents have exercised this authority after receiving advice from the Department of Justice. Throughout history, however, there have been exceptions. The President is not required to involve the Office of the Pardon Attorney or the Department of Justice prior to making clemency decisions.

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: As the nominee for Attorney General, I do not believe that I should express an opinion on matters concerning an ongoing investigation. As I testified, if confirmed, I will scrupulously follow the Special Counsel regulations and ensure that the Special Counsel is allowed to complete his work.

- 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: Please see my response to Question 38(a) above.

- 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: Please see my response to Question 38(a) above.

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

RESPONSE: No court has ever ruled on whether the President can pardon himself. I have not studied the issue.

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

RESPONSE: No President has ever sought to pardon himself. In all matters, if I am confirmed, I would ground my advice on my best judgment of the law and the facts of a particular case.

- 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: President George H.W. Bush issued an eloquent proclamation explaining why he believed those pardons were required by “honor, decency, and fairness.” Among his reasons were that the United States had just won the Cold War and the individuals he pardoned had long and distinguished careers in that global effort. As President Bush explained, the individuals he pardoned had four common denominators: (1) they acted out of patriotism; (2) they did not seek or obtain any profit; (3) each had a long record of distinguished service; and (4) they had already paid a price grossly disproportionate to any misdeeds.

The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. If confirmed, I would advise the President to carefully consider these and other appropriate factors in exercising his pardon power.

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: The Department has an important duty to investigate constitutional and civil rights violations by police departments when they occur. My understanding is that these matters are often initially reviewed by state or local prosecutors and the internal affairs division of the particular police department. To the extent that such violations may require the Department’s review, I am committed to working closely with the Department and FBI to conduct thorough investigations and, when the facts warrant it, use Department resources to initiate prosecutions against officers who abuse their authority and to bring appropriate civil actions against police departments.

- 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: I take seriously the Department’s role in protecting Americans’ civil rights. As I stated during the hearing, I generally support the policies reflected in former Attorney General Sessions’ memorandum. However,

because I am not currently at the Department, I recognize that I do not have access to all information. As in all matters, if confirmed, I would look at the individualized facts of the situation as well as the governing law and the policies of the Department in determining what the next, appropriate steps might be with respect to Attorney General Sessions' memorandum.

- 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: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter. The government may be in possession of information of which I am not aware that could influence my outlook on the matter, and it would be inappropriate to comment further without an opportunity to study and understand those facts.

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

RESPONSE: Beyond what I have seen reported publicly in the news media, I am not familiar with the facts and circumstances surrounding these issues. Therefore, I am not in a position to comment on the matter.

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: Yes. As I did then, I pledge to remain vigilant in looking for discrimination and to enforce vigorously federal laws against discrimination.

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

RESPONSE: If confirmed, I will enforce federal anti-discrimination laws for all Americans, including LGBTQ Americans.

- c. Do LGBTQ Americans face discrimination today?

RESPONSE: Yes. LGBTQ Americans, like many in America, face discrimination.

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

RESPONSE: It is my understanding that certain federal laws expressly provide LGBTQ Americans with protections against discrimination, such as in the Shepard-Byrd Hate Crimes Prevention Act. I also understand that the issue whether other federal laws, such as Title VII, provide such protections is subject to ongoing litigation.

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

RESPONSE: Please see my response to Question 41(d) above.

- 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: I have no basis to reach a conclusion regarding that issue.

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: Respectfully, my November 2018 op-ed did not oppose “efforts to combat LGBTQ discrimination.” I understand that the question of whether Title VII’s prohibition on sex-based discrimination in the workplace covers gender identity is currently pending in litigation, and the Department’s position is that it does not. Of course, the scope of Title VII and the question whether transgender individuals should be protected from workplace discrimination as a matter of policy are two different issues. With respect to *Lawrence v. Texas*, it remains my belief that the decision led to the invalidation of certain laws, some of which had been on the books for many years.

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: While I was not present in the Department of Justice for the events you describe, it is my understanding that the Department of Justice’s guidance on “Federal Law Protections for Religious Liberty” does not address that question. The guidance merely describes existing law. It does not—and could not—change the law. And it certainly does not abrogate existing antidiscrimination laws.

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: Yes. Although I am not familiar with the *Washington Post*’s analysis, I believe that extremist ideological groups, including right-wing groups, remain a significant domestic terrorism threat.

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

RESPONSE: If confirmed, I will vigorously support efforts to investigate domestic terrorism and hold any and all perpetrators accountable. I do not, however, want to prejudge or otherwise influence any outcomes by commenting directly on any of the Department’s ongoing investigations.

- 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: I am not in a position to speak for the President or speculate on what he was conveying.

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

RESPONSE: I am not familiar with the Department’s current budget and related funding requests. If confirmed, I will review the Department’s resource allocations, needs, and funding proposals. I believe that the Department should focus its resources generally on the most serious criminal activity, including domestic terrorism that threatens our national security and public safety.

- 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: I appreciate the Committee’s desire for information related to the Department’s efforts to combat domestic terrorism. If confirmed, I will be pleased to work with Congress through the Department’s Office of Legislative Affairs to keep the Committee appropriately informed of the Department’s efforts in this area, consistent with the Department’s law enforcement, national security, and litigation responsibilities.

- 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: I am not familiar with the details of the legislation. If confirmed, I can commit to working with Committee regarding legislation that supports the Department’s mission and priorities.

- 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: As Attorney General, I was committed to protecting and upholding the civil rights and voting rights of all Americans. If confirmed, I will bring that same commitment to the Department of Justice. During my time as Attorney General, I interposed Section 5 objections where those objections were valid based on the facts of the particular case and the governing law. As Congress and the Supreme Court had determined, Section 5 was an appropriate tool to protect voting rights based on the facts and circumstances at that time.

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

RESPONSE: I understand that the *Shelby County* decision rested on the Supreme Court’s determination that Congress had relied upon outdated findings to justify the reauthorization of Section 5 in 2006, which was thirteen years after my tenure as Attorney General concluded. The Department of Justice is bound to enforce the laws that Congress enacts, subject to the authoritative interpretations of the Supreme Court. If confirmed, I am committed to protecting and upholding the civil rights and voting rights of all Americans.

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

RESPONSE: If confirmed, I will be committed to protecting and upholding the civil rights and voting rights of all Americans. It is my understanding that the Voting Section of the Civil Rights Division bears primary responsibility for the Department’s enforcement of federal laws that protect the right to vote.

- 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: If confirmed, I will be committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

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: I have no knowledge of the facts and circumstances surrounding these instances beyond what I have seen reported in the news media. Therefore, I am not in a position to comment on these instances. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

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

RESPONSE: I cannot comment on a hypothetical question. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

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

RESPONSE: I have not studied the issue and therefore have no basis to reach a conclusion regarding it. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

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

RESPONSE: I have not studied this issue in detail. Therefore, I have no basis for reaching a conclusion on this issue.

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: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media. As a result, I am not in a position to comment on this matter.

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: *Roe v. Wade* is an established precedent of the Supreme Court.

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: I am generally aware that the Department has sought to require law enforcement grant recipients to provide cooperation with federal authorities with respect to criminal aliens in their custody. As a general matter, I believe that, where authority exists to do so, this is a common sense requirement that should be continued. I am not familiar with the specifics of any withholding of Byrne-JAG grant funds. But, 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.

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: That opinion was written prior to the passage of section 1045 of the National Defense Authorization Act for Fiscal Year 2016. That statute clarifies that no individual in U.S. custody may be subjected to any interrogation technique that is not authorized or listed in the Army Field Manual, and it prohibits the Army Field Manual from including techniques involving the use or threat of force. Any future questions on the issue would have to address that statutory provision, as well as any related constitutional issues.

- 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: Yes.

- c. Is waterboarding torture?

RESPONSE: Regardless of the label, section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of waterboarding on any person in U.S. custody. That statute clarifies that no individual in U.S. custody may be subjected to any interrogation technique that is not authorized or listed in the Army Field Manual, and it prohibits the Army Field Manual from including techniques involving the use or threat of force.

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

RESPONSE: The Department of Justice can, and routinely does, successfully prosecute and incarcerate terrorists in our domestic criminal justice system.

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?
- b. Did you agree with that decision?
- c. Will you review the Department's decision if you are confirmed?
- d. You have previously argued in an amicus brief that the Affordable Care Act is unconstitutional. Do you still hold that view?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of the decision you reference, and I am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the Department's position in this case. With regard to my prior amicus work, the Supreme Court upheld the constitutionality of the Affordable Care Act in *NFIB v. Sebelius*. If confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but on the law.

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: I am not aware of any specific decisions from the prior Attorney General’s tenure that I am currently in a position to characterize as misguided. The Department of Justice may be in possession of information of which I am not aware that could influence my outlook on the matter. I would hesitate to comment further without an opportunity to study and understand those facts.

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: I believe that the Department should focus its resources on the most serious criminal activity, including violent offenders who threaten public safety and those who illegally supply them with firearms. If confirmed, I intend to continue focusing Department resources on reducing violent crime, particularly in communities like Chicago that are facing unacceptable levels of firearms violence.

- 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: If confirmed, I expect to continue to pursue violent crime reduction as a top priority for the Department, and would expect federal prosecutors to target their efforts against those driving the violence in their communities - including persons who unlawfully arm criminals and others who cannot lawfully possess firearms.

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

RESPONSE: If confirmed, I look forward to reviewing the Department’s resource allocations, needs, and funding proposals to ensure that ATF and the Department’s other law enforcement components have the resources necessary to effectively combat violent crime, including gun-related violent crime.

- 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: If confirmed, I look forward to working with ATF to enhance local and state participation in these important programs.

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: If confirmed, I would seek to ensure that the Department effectively implements whatever programs Congress funds.

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: At the time, it was the practice of the George H.W. Bush administration to submit nominees to the ABA screening process pre-nomination. I am not familiar with the current judicial-selection process, but I do not believe that it is required.

- 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: I am not familiar with the current judicial-selection process. If confirmed, I look forward to learning more about the current process.

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: Accurate reporting of data regarding crime is vital to law enforcement. I understand from publicly available information that the Department has recently launched a new website and held a roundtable discussion with state and local law enforcement leaders aimed at improving the identification and reporting of hate crimes. If confirmed, I will be committed to working with state and local law enforcement and to improving the reporting of crimes, including hate crimes.

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?
- 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: I have not had the opportunity to study this issue. If confirmed, I look forward to reviewing the issue, including the facts of the situation and existing law and policies. Because I am not currently at the Department, and I am not familiar with these facts, it would not be appropriate for me comment further.

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: I believe that all provisions of the Constitution should be followed and enforced, as appropriate. If confirmed, I will honor my oath to protect and defend the Constitution of the United States.

- 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: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment on what specific actions I would take on this issue if confirmed.

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: The False Claims Act is an important tool used by the government to detect fraud and recover money. As stated at my hearing, if confirmed I will diligently enforce the False Claims Act. More generally, if confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but instead on the law and the best interests of the United States. The long-term interests of the United States with respect to the False Claims Act would be determined through, among other things, consultation with the Solicitor General, the Assistant Attorney General for the Civil Division, and other individuals within the Department, as well as with other relevant agencies within the federal government.

- 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: *Vermont Agency of Natural Resources v. United States ex rel. Stevens* is a precedent of the Supreme Court and is entitled to all respect due settled precedent. If confirmed, the positions that the Department advances on behalf of the United States would not be based on my personal views, but instead on the law and the best interests of the United States. The long-term interests of the United States with respect to the False Claims Act would be determined through, among other things, consultation with the Solicitor General, the Assistant Attorney General for the Civil Division, and other individuals within the Department, as well as with other relevant agencies within the federal government.

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

RESPONSE: As stated at my hearing, if confirmed I will diligently enforce the False Claims Act.

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

QUESTIONS FROM SENATOR WHITEHOUSE

Protecting the Independence of the DOJ and Mueller Investigation

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: As I explained at my hearing, the current Department of Justice regulations that govern the Special Counsel were enacted at the end of the Clinton Administration and reflected, to a certain extent, bipartisan dissatisfaction with certain elements of the previous independent counsel regime. If confirmed, I intend to follow the Special Counsel regulations scrupulously and in good faith. I believe that the current regulations appropriately balance the relevant considerations, although I would be open to considering how they can be improved. However, I do not believe that the Special Counsel regulations should be amended during the current Special Counsel's work. Any review of the existing regulations should occur following the conclusion of the Special Counsel's investigation.

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

RESPONSE: I would consult with Special Counsel Mueller and other Department officials about the appropriate response to such a request in light of the Special Counsel’s findings and determinations at that time.

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: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel’s report is to be “handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. See 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

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

- i. Do you agree that Congress has a constitutional responsibility to investigate and prosecute a President for high crimes and misdemeanors when warranted?
- 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: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” *See* 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel’s report is to be “handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

An opinion issued by the Office of Legal Counsel held that an indictment or criminal prosecution of a sitting President would unconstitutionally undermine the capacity of the executive branch to perform its constitutionally assigned functions. To the best of my understanding, the OLC opinion remains operative.

Congress can and does conduct its own investigations, and its right to do so is not precluded by the Department’s decision not to provide certain information about an uncharged individual gathered during the course of a criminal investigation.

As I testified before the Committee, I believe that it is very important that the public and Congress be informed of the results of the Special Counsel’s work. My goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies.

The Constitution grants the legislative branch the power to impeach for, and convict of, treason, bribery, or other high crimes and misdemeanors. I am not in a position to opine or speculate on the manner in which the Congress determines what constitutes a high crime or misdemeanor, or how the Congress gathers evidence in support of or in contradiction to that conclusion.

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

RESPONSE: When I served as Attorney General, I hired Mr. Cipollone to serve as an aide in my office. We have been personal and professional acquaintances ever since. I am not aware of the full extent of Mr. Cipollone’s organizational affiliations. However, to the best of my recollection and knowledge, we served together on the board of directors of the Catholic Information Center for a period of time, we both were affiliated with Kirkland & Ellis LLP for several months in 2009, and we are both members of the Knights of Columbus.

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: To the best of my recollection, I have not had any discussions with Mr. Eisenberg regarding any matters related to, or clients of, Kirkland & Ellis, LLP since he left the firm in 2017.

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?
 - b. In what circumstances would it be appropriate for you, if confirmed as AG, to discuss a pending criminal matter with the White House?
 - c. What is the goal of restrictions on communications between DOJ and the White House regarding ongoing investigations and prosecutions?

RESPONSE: The Department has policies in place that govern communications between the White House and the Department. If I am confirmed, I would act in accordance with applicable Department of Justice

protocols, including the 2009 Memo on communications with the White House issued by former Attorney General Holder. Consistent with the 2009 Holder Memo, initial communications between the Department of Justice and the White House concerning investigations or cases should involve only the Attorney General, the Deputy Attorney General, or the Associate Attorney General. The purpose of these procedures is to prevent inappropriate political influence or the appearance of inappropriate influence on Department of Justice matters. If confirmed, I will be reviewing many of the policies and practices of the Department and making adjustments as appropriate.

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: Because I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media. Therefore, I am not in a position to comment on this matter.

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: I am aware of the referenced conversation only through news media reports and do not know all of the facts and circumstances. Therefore, I am not in a position to comment.

- 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: Much of the Department’s law enforcement work involves non-public, sensitive matters. Disseminating non-public, sensitive information about Department matters could invade individual privacy rights; put a witness or law enforcement officer in danger; jeopardize an investigation or case; prejudice the rights of a defendant; or unfairly damage the reputation of a person among other things. The Department’s policies generally prohibit the unauthorized disclosure of such information to members of the public. See Justice Manual § 1-7.100.

Executive Power and Privilege

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: It is well established that the presidential communications privilege applies to communications between the President and the Attorney General. See generally *Confidentiality of the Attorney General’s Communications in Counseling the President*, 6 Op. O.L.C. 481 (1982). In the course of holding that communications to and from “presidential advisers in the course of preparing advice for the President come under the presidential communications privilege,” *In re Sealed Case*, 121 F.3d at 752, see also *id.* at 757, the D.C. Circuit cautioned (in the language quoted in the question) that “staff outside the White House in executive branch agencies” who may be preparing advice for the President should not be viewed as “presidential advisers” for purposes of the privilege. *Id.* at 752. The quoted language did not suggest that communications between executive branch agencies and White House staff are not subject to the privilege. To the contrary, a subsequent D.C. Circuit case, applying *Sealed Case*, held that communications between Justice Department officials and the President or his White House staff fall within the scope of the privilege. *Judicial Watch v. Department of Justice*, 365 F.3d 1108 (D.C. Cir. 2004).

- 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: *In re Sealed Case* is an important precedent that the Justice Department regularly applies in its court filings. I cannot speculate on whether circumstances might arise where the Department might seek any modification of that precedent by the D.C. Circuit or the Supreme Court.

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: I stand by the statement I made in your office. It was based on my understanding that it has been the longstanding policy of the Executive Branch not to assert executive privilege for the purpose of covering up evidence of a crime.

- 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: Please see my response to Question 11(a) above. That response applies whether or not an individual is subject to indictment.

- 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: Beyond observing that the hypothetical situation identified in this question seems unlikely to arise, I cannot speculate on how I might proceed other than to say that, as in all matters, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining what the next, appropriate steps might be.

- 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: Please see my response to Question 11(c) above.

- 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: I would resign.

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: I am committed to responding to Congressional requests and inquiries consistent with the law and Department policies and in good faith. Because many of the policies and practices regarding Executive Branch responses to Congressional requests for information have changed since I was Attorney General, I will need to review current practices. I understand that the current practice is that when the Executive Branch sends a congressional committee a letter informing it that the President has asserted executive privilege, the letter encloses a copy of the Attorney General’s letter advising the President that the assertion of privilege is legally permissible. The Attorney General’s letter typically provides a description of the categories of materials that are subject to the privilege assertion and the legal basis for the assertion. Prior to the assertion of the privilege, the Executive Branch will also have described the withheld information in letters to the committee and otherwise. In so doing, the Executive Branch will have made clear what categories of privileged information are involved and identified the confidentiality interests that ultimately were the basis for the executive privilege assertion. My understanding is that the Executive Branch has found that these procedures provide more useful and timely information to committees than a document-by-document privilege log.

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: The Executive Branch engages in good faith negotiation with congressional committees in an effort to accommodate legitimate oversight needs, while safeguarding the legitimate confidentiality interests of the Executive Branch. This accommodation process has historically been the primary means for successfully resolving conflicts between the branches and has, except in extraordinary cases, eliminated the need for an executive privilege assertion. Because the effort to accommodate congressional requests for privileged information requires an iterative process, it will often be necessary to withhold information, without any invocation of privilege by the President, in order to permit continued negotiation and to preserve the President's ability to assert privilege.

Responsiveness to Congressional Oversight

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?
 - 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: I agree that it is important to be responsive to this Committee's requests in as timely a fashion as possible. I understand that the Department works to accommodate the Committee's information and oversight needs, including the submission of answers to written questions, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will work with the relevant Department components, including the Office of Legislative Affairs, to see that the Committee's requests receive an appropriate response.

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: Please see my response to Question 14 above.

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

RESPONSE: I agree that it is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to appropriately respond to all members of the Committee, consistent with the Department's law

enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department's Office of Legislative Affairs.

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: I believe it is important to provide thorough and accurate responses to Congress, where appropriate. If confirmed, I will work with the Office of Legislative Affairs to respond in a timely manner to any inquiries from the Committee regarding the work of the Department.

June 8 Memo Regarding Special Counsel Mueller's Obstruction Theory and May 2017 Op-Ed Defending the Firing of FBI Director Comey

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: As I described in my testimony, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. During the meeting, the President reiterated his public statements denying collusion and describing the allegations as politically motivated. I did not respond to those comments. The President also asked my opinion of the Special Counsel. As I testified, I explained that I had a longstanding personal and professional relationship with Special Counsel Mueller and advised the President that he was a person of significant experience and integrity.

On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation,

and he did not ask me about what I would do about anything in the investigation.

On December 5, 2018, following President Bush's funeral, President Trump asked me to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel's investigation. The President has not asked me my views about any aspect of the investigation, and he has not asked me about what I would do about anything in the investigation.

The Vice President and I are acquainted, and since the spring of 2017, we have had occasional conversations (sometimes joined by his chief of staff) on a variety of subjects, including policy, personnel, and other issues. Our conversations have included, at times, general discussion of the Special Counsel's investigation in which I gave my views on such matters as Bob Mueller's high integrity and various media reports. In these conversations, I did not provide legal advice, nor, to the best of my recollection, did he provide confidential information.

As discussed in my testimony, after drafting my June 8, 2018 memorandum, I sent a copy of the memorandum and discussed my views with White House Special Counsel Emmet Flood. I also provided a copy to Pat Cipollone, who now serves as White House Counsel, and discussed my views with him and others.

Finally, I have spoken with members of the White House staff about numerous issues, including paperwork and logistics, as part of the selection and nomination process for this position.

This answer relates the conversations responsive to the question to the best of my recollection. But I am acquainted with a number of people who serve or have served at the White House. As best I can recall, I have not spoken about the substance of the Special Counsel's investigation with those people, though the investigation is, of course, a constant topic of conversation in Washington legal circles and it may have arisen.

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: As I stated in my letter of January 14, 2019 to Chairman Graham, I sent a copy of my June 8, 2018 memorandum to Pat Cipollone and have discussed the issues raised in the memo with him, Marty and Jane Raskin, and Jay Sekulow. The purpose of those discussions was to explain my views. To the best of my recollection, the President's lawyers have not conveyed to me any information about the Special Counsel's view of the obstruction of justice statutes.

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: To the best of my recollection, I had the following conversations with Department of Justice Officials about the Special Counsel's investigation. Before I began writing the memorandum, I provided my views on the issue discussed in the memorandum to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views on the issue discussed in the memorandum to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering, but he later indicated that he was not involved in the Special Counsel's investigation and would not be reading my memorandum. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel's investigation.

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: As a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under 18 U.S.C. § 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not

just by future Presidents, but by all public officials involved in administering the law, especially those in the Department of Justice. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, 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. I discussed my views broadly with a number of lawyer friends; wrote the memo to senior Department officials and sent it to them via email; shared it with other interested parties; and later provided copies to friends.

I was not representing anyone when I wrote the memorandum, no one requested that I draft it, and I was not compensated for my work. I researched and wrote it myself, on my own initiative, without assistance, and based solely on public information.

To the best of my recollection, before I began writing the memorandum, I provided my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel’s investigation.

In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. To the best of my recollection, I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views. My letter of January 14, 2019 to Chairman Graham identifies other individuals with whom I can recall sharing the memorandum and/or discussing its contents.

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: If confirmed, it is possible that I will be responsible for overseeing the Special Counsel’s investigation under applicable regulations. Accordingly, it would not be appropriate for me to speculate regarding hypothetical scenarios. As a general matter, if presented with novel legal questions of constitutional importance while serving as Attorney General, I would likely consult with the Office of Legal Counsel and other relevant personnel within the Department of Justice to determine the appropriate path forward under applicable law.

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

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

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: The memorandum that I drafted in June 2018 was narrow in scope. It addressed only a single subsection of one federal obstruction statute – namely, 18 U.S.C. § 1512(c). Nevertheless, the memorandum expressly discussed, and noted the relevance of, other federal obstruction statutes, such as 18 U.S.C. § 1505, to the interpretation of section 1512(c). Specifically, on page 17, the memorandum notes that “when Congress sought to ‘clarify’ the meaning of ‘corruptly’ in the wake of *Poindexter*, it settled on even more vague language – ‘acting with an improper motive’ – and then proceeded to qualify this definition further by adding, ‘including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.’ 18 U.S.C. § 1515(b).” Section 1515(b), in turn, provides the definition of “corruptly” that is used in § 1505, which you refer to as the “codification” of the False Statements Accountability Act of 1996. *See* 18 U.S.C. § 1515(b) (“As used in section 1505, 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.” (Emphasis added)). As the memorandum explained, the “fact that Congress could not define ‘corruptly’” in § 1505 “except through a laundry list of acts of evidence impairment strongly confirms that, in the obstruction context, the word has no intrinsic meaning apart from its transitive sense of compromising the honesty of a decision-maker or impairing evidence.” In other words, when Congress attempted to define the term “corruptly” in § 1505, it could only do so by providing examples that relate to the suppression or impairment of evidence, which supports the conclusion that, outside of that context, it is difficult to define exactly what “corruptly” means.

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’”).

As noted above, my memorandum only addressed the scope of section 1512(c). It did not address the meaning or scope of other federal obstruction statutes. If such issues were to arise during my tenure as Attorney General, I would consult with the Office of Legal Counsel, the Criminal Division, and other relevant Department of Justice personnel to determine the best view of the law and proceed accordingly.

24. On May 12, 2017, you published an op-ed in the Washington Post defending President Trump's firing of FBI Director James Comey.
- Did anyone ask you to write that op-ed, or suggest that you write it? If so, who?
 - 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?
 - Did you discuss the op-ed before its publication with any person currently or formerly associated with the Federalist Society?
 - 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: To the best of my recollection, following the removal of former FBI Director Comey, my former Deputy Attorney General, George Terwilliger, asked me to join him in drafting an op-ed on the issue. During the course of drafting, we determined that I would submit the op-ed under my name due to Mr. Terwilliger's busy schedule. It is my understanding that Mr. Terwilliger had been contacted by a publicist who was working with the Federalist Society to assist in placing the op-ed with publications. Although I normally submit opinion pieces to the *Washington Post* directly, in this instance I provided a draft of the op-ed to the publicist, who eventually placed it with *Washington Post*. I also spoke with friends about submitting an op-ed on this topic, but do not recall sending a draft of the op-ed to any person at the White House, on President Trump's legal team, at the Department of Justice, or any Republican House committee members or staff.

Recusal and Compliance with Ethics Guidance

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: If confirmed, I will be committed to ensuring that all appointees comply with the requirements of the financial disclosure reporting program. I understand that the Ethics in Government Act (EIGA) requires that filers of public financial disclosure reports (SF-278s) report the identity of each source of compensation in excess of \$5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report. 5 U.S.C. app. §102(a)(6). The filer must provide: (1) the identity of each source of compensation, and (2) a brief description of the nature of the duties performed. 5 U.S.C. app. §102(a)(6)(B)(i) and (ii). EIGA does not require filers to report the underlying sources of income that were provided to the filers’ sources of compensation. EIGA specifically excludes from its reporting requirements any “positions held in any religious, social, fraternal, or political entity....” 5 U.S.C. app. §102(a)(6).

At the same time, as I said in my testimony, I understand the underlying concern and intend to explore this issue further with the Department’s ethics officials and the Office of Governmental Ethics.

- 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: If confirmed, I will ensure that the Department’s ethics review of financial disclosure reports is consistent with legal requirements. It is also my understanding that if the filer has properly reported all necessary entries on his or her SF-278, an ethics reviewer will not assume that efforts have been made to hide identities.

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

RESPONSE: I do not believe that it is possible to make a recusal decision unless and until I am confirmed and the specific facts and circumstances of any live controversy are known. If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. I believe the ethics review and recusal process established by applicable laws and regulations provides the framework necessary to promote public confidence in the integrity of the Department’s work, and I intend to follow those regulations in good faith.

Though I am not familiar with the Department’s policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department’s established policies and practices.

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: I am not aware of the nature of the Inspector General’s review, should one be occurring, but I have no intent to interfere with the Inspector General’s work.

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: I did not commit to conduct any investigations; I promised only to look into issues of concern to the Chairman and noted that investigations may be underway right now. In any event, I did not commit in advance to conduct any specific investigation.

In the hearing, Chairman Graham raised the issue of numerous inappropriate text messages exchanged by two FBI employees that appear to document personal or political bias for Secretary Clinton and prejudice against President Trump. Chairman Graham also spoke about the FBI's potential use of the Steele-authored "dossier" as a basis to obtain a Foreign Intelligence Surveillance Act (FISA) warrant from the FISA Court. FBI investigations must be based on the law and the facts and should be conducted without regard to political favoritism. If confirmed, I will seek to better understand what internal reviews of these and related matters were undertaken, including any investigations conducted by the Inspector General, United States Attorney John Huber, and the Department's ethics and professional responsibility offices.

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: Please see my response to Question 26 above.

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: Acting Attorney General Whitaker and I have had preliminary discussions to explore possible positions both inside and outside of the Department where he may best be able to continue to serve his country. No decisions have been made.

DOJ & OLC Duty of Candor

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: If confirmed, I will ensure that all Department attorneys, including attorneys within the Office of Legal Counsel, are receiving the appropriate ethical and professional responsibility training. I will address any insufficiency in the current ethics training program, should I discover that one exists.

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: I know and have confidence in Assistant Attorney General Engel and in the Office of Legal Counsel. Indeed, I have known some of OLC’s attorneys since I ran the office nearly 30 years ago. I do not know the author of the *Washington Post* op-ed, who works for an advocacy group espousing the notion that the United States has “seen an unprecedented tide of authoritarian-style politics sweep the country.” However, the author’s statement that “[w]hen OLC approves orders such as the travel ban, it goes over the list of planned presidential actions with a fine-toothed comb, making sure that not a hair is out of line” certainly reflects my experience with the Office.

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

RESPONSE: Please see my response to Question 32(a) above.

- 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: In my experience, when OLC reviews proposed executive orders, it seeks, to the greatest extent possible, to verify the factual and legal predicates for the proposed action, relying upon the experience and expertise of others in the Executive Branch.

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

RESPONSE: Please see my response to Question 32(c) above.

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

- 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: No, I have no reason to believe that, and that is not consistent with my dealings with OLC.

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

RESPONSE: As I stated in my confirmation hearing, “I love the department ... and all its components.... I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I’d like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity.... And I feel that I’m in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I’m going to do what I think is right.”

Campaign Finance

33. Social welfare groups, organized under Section 501(c)(4) of the Tax Code, are 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: Enforcement of our tax laws and the laws protecting the integrity and transparency of our election process must be a priority for the Department

of Justice. Determining whether there is criminal liability under specific statutes would require an individualized assessment of the facts presented in a specific case, consistent with the Principles of Federal Prosecution. As in all matters, if confirmed, I would look at the individualized facts and circumstances and follow the law and any policies of the Department.

- 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: If confirmed, I would evaluate any such situation based on actual facts and circumstances if and when presented.

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, 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: Yes. My understanding is that when bad actors exploit front companies, shell companies, other legal structures, and nominees, this creates challenges for prosecutors and investigators seeking to identify the true owners of these entities.

- 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: If confirmed, I would be pleased to work with you and other Members of Congress, as well as others in the Executive Branch, to discuss ways to combat money laundering more effectively.

- 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: If confirmed, I will further familiarize myself with this issue and consult with the Department's subject matter experts.

Federalist Society and Involvement in Judicial Selection

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

RESPONSE: As I stated in my January 3, 2019 letter to the Committee, I have never been a member of the Federalist Society, although I have intermittently participated in activities and events organized by the group, including as a speaker. Speeches I have given at Federalist Society events are listed in my answer to Question 12 on the Committee's questionnaire. In addition, as disclosed in my questionnaire, I served on the Federalist Society's 1987 Convention Planning Committee, though I do not recall specifics of my involvement.

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

RESPONSE: Mr. Leo is a longtime personal and professional acquaintance. We speak on occasion and see each other from time to time at events in and around Washington, D.C. While I do not know the full extent of Mr. Leo's organizational affiliations, I believe that we have both been affiliated with the Catholic Information Center. In addition, as noted above, I have from time to time attended events organized by the Federalist Society, for which Mr. Leo works. Although I do not at this time recall any other shared organizational affiliations with Mr. Leo, it is possible he has been involved with other groups with which I have been affiliated, including those identified in my Committee questionnaire.

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: To the best of my recollection, my only involvement with judicial nominees during the Trump Administration was a brief, informal phone call with then-White House Counsel Donald McGahn in summer 2018 in which I expressed my views regarding then-Judge Brett Kavanaugh and Judge Thomas Hardiman. I do not recall any other involvement, but it is possible that I have expressed support for a judicial candidate at some point.

Domestic Terrorism

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: If confirmed, I will vigorously enforce the nation’s hate crimes laws to protect all Americans from violence and attacks motivated by their differences. I have not studied the federal definition of “domestic terrorism” or its application to violations of the federal hate crimes laws. If confirmed, I will

be firmly committed to prosecuting all federal hate crimes where warranted by the facts, the governing law, and Department policy.

Accurate reporting of data regarding crime is vital to law enforcement. I understand from publicly available information that the Department has recently launched a new website and held a roundtable discussion with state and local law enforcement leaders aimed at improving the identification and reporting of hate crimes. If confirmed, I will be firmly committed to working with state and local law enforcement and to improving the reporting of crimes, including hate crimes.

Criminal Justice

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: Yes, if confirmed, I will work with relevant Department components to ensure the Department implements the FIRST STEP Act and to determine the best approach to implementing the Act consistent with congressional intent.

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: I firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. I also believe that the Department’s charging and sentencing decisions should, to the extent feasible, reflect uniform application of the laws. My understanding is that the current policy facilitates that goal while maintaining flexibility when it is warranted. In that way, we should expect to see similar cases treated similarly, regardless of the district in which the case is brought. I believe these fundamental principles – uniformity, fairness, justice – inure to the public good, promote respect for the rule of law, and promote public safety.

- 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: Please see my response to question 40(a) above.

- 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: I believe that law-abiding citizens in every community want to live their lives free from violent crime. Mandatory minimum sentences can be an effective tool to take the most violent offenders off the streets for the longest period of time, thereby increasing public safety. I also firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. It is my understanding that the Department’s charging policy allows prosecutors the discretion to deviate from the general requirement of charging the “most serious, readily provable offense” in cases where the prosecutor believes it is in the interest of justice to do so. If confirmed, I will ensure that the Department’s charging and sentencing policies demand a fair and equal application of the laws passed by this body, while providing the necessary flexibility to serve justice.

- 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: It is my understanding that the Department’s charging policy applies to all charging decisions in criminal cases without regard to the nature of the crime(s) to be charged.

Civil Rights

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?

- 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?
- 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: I take seriously the Department’s role in protecting Americans’ civil rights. As I stated during the hearing, I generally support the policies reflected in former Attorney General Sessions’ memorandum. However, because I am not currently at the Department, I recognize that I do not have access to all information. As in all matters, if confirmed, I would look at the individualized facts of the situation as well as the governing law and the policies of the Department in determining what the next, appropriate steps might be with respect to Attorney General Sessions’ memorandum.

- 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: Yes. My belief remains that the Department should defend the constitutionality of congressional enactments except when they are clearly unconstitutional or impinge on executive prerogative. The Metropolitan Washington Airports Act Amendments of 1991, Pub. L. No. 102-240, Title VII, 103 Stat. 2197 (Dec. 18, 1991), is an example of such a statute. When I was Attorney General, the Department declined to defend certain provisions of the statute because they raised serious separation of powers concerns and violated the Appointments Clause. On July 13, 1992, Stuart M. Garson, then-Assistant Attorney General for the Civil Division, sent a letter to Senator Robert C. Byrd, pursuant to 28 U.S.C. § 530D, explaining this decision.

- 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: Because I am not currently at the Department, I am not familiar with the specifics of this decision, and am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the

Department's position in this case.

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

RESPONSE: I have not studied the issue and therefore have no basis to reach a conclusion regarding it.

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: I cannot comment on a hypothetical question. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

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?
 - 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: I understand that the question of whether Title VII's prohibition on sex-based discrimination in the workplace covers gender identity is currently pending in litigation, and the Department's position is that it does not. Of course, the scope of Title VII and the question whether transgender individuals should be protected from workplace discrimination as a matter of policy are two different issues.

[Questions numbered 46 and 47 were missing in the submission of Questions for the Record that were received from the Senate Committee on the Judiciary.]

Religious Liberty

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

RESPONSE: The reports you quote take substantial parts of my speech out of context and are inaccurate. Contemporary societal problems are complex and caused by many factors. I have never claimed that societal problems are caused by specific individuals or specific classes of individuals.

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: If confirmed, I will be firmly committed to fostering a fair, open, and equitable workplace for all Department employees, including non-religious attorneys and staff, in accordance with all applicable laws and Department policies.

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: I am not currently at the Department, and I am unfamiliar with the work of that Task Force, so I am unable to comment at this time.

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: I cannot speculate on a hypothetical question. I believe people should be hired based on their qualifications and performance, but I also believe it is vital that we not use governmental power to suppress the freedoms of religious communities in our country.

Environmental Enforcement

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: Because I am not currently at the Department, I am not familiar with all the circumstances referenced in your question and therefore am not in a position to make a commitment at this time. However, it is my understanding that the Environment and Natural Resources Division has issued guidance, available at <https://www.justice.gov/enrd/page/file/1043726/download>, on the implementation of Attorney General Sessions’ memorandum in environmental cases. That guidance indicates that the Sessions memorandum did not change preexisting policy regarding SEPs, as it “does not prohibit, as part of a settlement, a defendant from agreeing to undertake a supplemental environmental project related to the violation, so long as it is consistent with EPA’s Supplemental Environmental Projects (SEP) Policy, which already expressly prohibits all third-party payments.”

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

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>).

of federal law and commit to reversing these trends?

RESPONSE: I am not familiar with the source of these statistics, and so have no basis to agree or disagree with them. I am committed to the fair and evenhanded enforcement of the laws within the Department's jurisdiction, including by assessing appropriate penalties to punish and deter unlawful conduct.

General

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: It is not uncommon for the Justice Department to change litigation positions in a small number of cases following a change in presidential administrations. The Department changed position in four significant cases during the Supreme Court's last term, and the Court ultimately agreed with the Department in each of those cases.

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

RESPONSE: I do not recall any significant changes in litigation positions during my tenure as Attorney General, although I cannot say categorically that no changes occurred.

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

RESPONSE: I believe the Justice Department should change litigating positions only after weighing the importance of the issue, how erroneous the prior position was, the Department's reasoning in reaching the prior position, and any other relevant factors depending on the facts of the case. If confirmed, I would consult with other members of the Department and the Executive Branch to ensure that those and any other relevant and appropriate factors are carefully considered before making any change in position.

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: When the President announced his intent to nominate me to serve as Attorney General, I stopped actively working on matters relating to Caterpillar. It is likely that my prior representation of Caterpillar will present conflicts, and it is my understanding that certain types of conflicts cannot be waived. If confirmed, I commit to following all applicable laws, regulations, and rules with respect to my prior representation of Caterpillar and, if necessary, recusing from any matters relating to the company. Other than information that is publicly available, I am unable to provide further details regarding the nature and specifics of my work for Caterpillar due to applicable privileges and confidentiality obligations.

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

RESPONSE: Tax enforcement, whether criminal or civil, is critical to both specific and general deterrence. When wrongdoers are held responsible for their misconduct it helps strength the compliant taxpayer's confidence in the fairness of the tax system. If I am fortunate to be confirmed I will seek to strategically deploy the Department's resources to ensure the equitable enforcement of our tax laws.

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

QUESTIONS FROM SENATOR KLOBUCHAR

Recusal

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: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department's established policies and practices.

- 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: I have consulted with Kirkland & Ellis and they have informed me that the firm does not and has not represented an entity or individual in connection with the Special Counsel's investigation.

Special Counsel's Report

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: Under 28 C.F.R. § 600.9(a)(3), the Attorney General will transmit a report to Congress upon the conclusion of the Special Counsel's

investigation. The Attorney General may release the report publicly to the extent that the release would comply with applicable legal restrictions. If confirmed, I would handle the report consistent with the regulations and established Department procedures, and I can assure the Committee that any report sent to Congress will be my own and will not reflect changes from anyone outside the Department of Justice.

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

RESPONSE: Although there could conceivably be information in the Attorney General's report, such as classified information, that may not be publicly disclosed, 28 C.F.R. § 600.9(a)(3) does not itself restrict what Congress may do with the report.

Freedom of the Press

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

RESPONSE: I have not yet had a chance to familiarize myself with the current guidance. The Department of Justice's policies and practices should ensure our nation's security and protect the American people while at the same time safeguarding the freedom of the press.

Management of the Justice Department

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: Because I am not currently at the Department, I am not familiar with the specifics of this decision, and am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the Department’s position in this case.

- 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: I know and have confidence in Assistant Attorney General Engel and in the Office of Legal Counsel. Indeed, I have known some of OLC’s attorneys since I ran the office nearly 30 years ago. I do not know the author of the *Washington Post* op-ed, who works for an advocacy group espousing the notion that the United States has “seen an unprecedented tide of authoritarian-style politics sweep the country.” However, the author’s statement that “[w]hen OLC approves orders such as the travel ban, it goes over the list of planned presidential actions with a fine-toothed comb, making sure that not a hair is out of line” certainly reflects my experience with the Office.

As I stated in my confirmation hearing, “I love the department . . . and all its components . . . I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I’d like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity . . . And I feel that I’m in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I’m going to do what I think is right.”

Voting Rights

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: I have not studied the issue and therefore have no basis to reach a conclusion regarding it. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

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

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, including through enforcement actions brought under Section 2 of the Voting Rights Act. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

Antitrust

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: I believe that sufficient resources are always necessary to maintain appropriate enforcement, including against anticompetitive mergers and monopolization. If confirmed, I will work with the Antitrust Division to assess what resources are necessary to ensure appropriate and effective enforcement of the antitrust laws. If requested, I would be pleased to review any proposed legislation, to the extent appropriate.

- 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: As I understand, the antitrust laws prohibit mergers that may substantially lessen competition in the purchase of inputs as well as in the sale of products. Section 12 of the current DOJ/FTC Horizontal Merger Guidelines explains how the Antitrust Division evaluates mergers for the potential that they may give firms increased market power over the purchase of inputs and thus the ability to lower input prices. This framework would apply to mergers that create monopsony power, including such power over labor markets.

- 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: I understand that some have suggested that post-settlement data may be useful in conducting retrospective reviews of mergers and the effect of consent decrees. If confirmed, I look forward to discussing with the Antitrust Division when and how such retrospective merger reviews might be informative and to working with you should any legislative measures be necessary.

- 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: It is my understanding that some vertical mergers have raised competition concerns and have been the subject of enforcement actions over the past few decades. If confirmed, I will continue the review of vertical transactions to determine whether they are likely to create the incentive and ability for a merged entity to harm competition to the detriment of consumers, in violation of the antitrust laws.

- 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: I understand that the Antitrust Division has announced that it is reviewing and considering revisions to the Non-Horizontal Merger Guidelines, published as part of the merger guidelines of 1984. If confirmed, I look forward to learning more about this review and working with the Antitrust Division to make appropriate revisions that will update the guidance consistent with existing law and promote transparency in vertical merger review.

- 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: I agree that this question raises important issues. If confirmed, I look forward to studying and discussing these issues from a competition standpoint with the Antitrust Division.

- 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: The Department is and should continue to be a leader in antitrust enforcement globally. If confirmed, I will study and explore whether there are differences in enforcement activity between the United States and the EU, and what may underlie any differences between the two jurisdictions.

- 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: Pursuant to long-standing practice, to ensure both the FTC and the Department do not review the same conduct, civil antitrust matters with respect to pharmaceuticals usually are handled by the FTC, whereas the Antitrust Division exclusively handles all criminal enforcement in this industry. If confirmed, I will commit to working with the Antitrust Division to enforce the antitrust laws against any company or individual who conspires to fix drug prices, allocates customers, or otherwise engages in anticompetitive practices, in the pharmaceutical industry.

- 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: I understand that the Department has implemented a program to participate actively in private antitrust cases through the filing of amicus briefs and statements of interest, in order to promote the appropriate and

effective enforcement of the antitrust laws. If confirmed, I look forward to working with the Antitrust Division on these efforts.

White Collar Crime

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: Yes, although the question does not accurately characterize my article. I am committed to fully and fairly enforcing the law. As I noted at my hearing, I believe my prior experience overseeing the Department's aggressive response to the savings and loans crisis demonstrates that I will not shy away from prosecuting corporate fraud or other white collar crime.

- 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: The question does not accurately characterize my speech. Please see my response to Question 7(a) above.

Presidential Records Act

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: Yes. The definition of "Presidential records" for purposes of the Presidential Records Act includes "documentary materials ... created or received by the President." 44 U.S.C. § 2201(2).

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

RESPONSE: The Supreme Court has upheld the constitutionality of the predecessor statute to the Presidential Records Act, in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), and I believe the rationale of that decision also applies to the Presidential Records Act.

Immigration

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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

- 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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

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

RESPONSE: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter.

Trafficking

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: Rigorous enforcement of our anti-trafficking laws is essential to providing for the security of Americans. I do not know what Departmental resources are currently being devoted to combatting sex trafficking at this time, but if I am fortunate enough to be confirmed, I will evaluate the Departmental resources and needs to determine the best method of fighting the scourge of human trafficking.

Opioid Epidemic

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: Under my leadership, the Justice Department will work closely with state, local, and tribal law enforcement and other federal agencies in a “whole of government” approach, targeting all aspects of this epidemic, from the over-prescription and diversion of controlled prescription drugs to the illicit trafficking of heroin and fentanyl. I will continue Attorney General Sessions’ efforts to enforce our laws against bad actors in the prescription opioid distribution chain, and I will continue to prioritize opioid related healthcare fraud prosecutions. With regard to illicit opioids, the Justice Department will work with our foreign counterparts, particularly in Mexico, Canada, and China, to stem the flow of illicit narcotics across the southwest border and through our postal system. I will prioritize prosecutions involving synthetic opioids, to include prosecutions involving transnational criminal organizations and prosecutions involving the use of the internet to traffic drugs.

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

RESPONSE: Local law enforcement officers are our first line of defense to this epidemic. Every day, local law enforcement officers save lives. They respond to drug overdoses and administer Naloxone. They warn the public when it appears that a particularly deadly batch of drugs has caused multiple overdoses. They take steps to protect the children of addicted parents. Local law enforcement officers are critical to our federal response to the epidemic because they know the communities most impacted by the epidemic. If confirmed, I will ensure that our federal agents work closely with state, local, and tribal law enforcement officers through task forces.

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: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. I believe the ethics review and recusal process established by applicable laws and regulations provides the framework necessary to promote public confidence in the integrity of the Department's work, and I intend to follow those regulations in good faith.

I am not currently at the Department and have not spoken further with ethics officials nor studied the Department's practices on these matters. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department's established policies and practices, and recognized Executive Branch confidentiality interests.

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: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." See 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as

are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy, and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

- 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: If confirmed, I will consult with Deputy Attorney General Rod Rosenstein to better understand any prior consideration regarding the release of information from the Special Counsel, and I will evaluate the report from the Special Counsel when it is received.

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: I would resign.

- 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: Yes.

- 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: If confirmed, I will ensure that the Special Counsel finishes his work, and that all of the Department's investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence. As I testified, I will follow the Special Counsel regulations scrupulously and in good faith.

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: As a general matter, depending on the facts and circumstances, it could be a breach of the President's obligation under the Constitution to faithfully execute the laws if he were to halt a lawful investigation for an improper purpose. The Department's investigative and prosecutorial decisions should always be based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and should be made without bias or inappropriate outside influence.

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: The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. Under the Constitution, the President's power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. A president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate. And as I explained in my testimony, under applicable Department of Justice policy, if a President's actions constitute a crime, he or she may be subject to prosecution after leaving office. If confirmed, I will consult with the Office of Legal Counsel and other relevant Department personnel regarding any legal questions relating to the President's pardon authority.

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: If confirmed, I will faithfully comply with all applicable laws and regulations.

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: It is my understanding that the Supreme Court has not overruled *Morrison v. Olson*. If confirmed, and if the issue arose, I would need to consult with the Office of Legal Counsel and review subsequent decisions by the Supreme Court to determine whether they have any bearing on the decision.

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: As I stated during my hearing before the Committee, if confirmed, I will follow the Special Counsel regulations scrupulously and in good faith, and I will not permit partisan politics, personal interests, or any other improper considerations to interfere with the Special Counsel’s investigation.

As I explained in detail in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, I provided my June 8, 2018 memorandum to a number of different people, including officials at the Department of Justice and the President’s lawyers. At the Department of Justice, Deputy Attorney General Rosenstein briefly acknowledged receipt of the memorandum and noted that his policy was not to comment publicly on the Special Counsel’s investigation; Assistant Attorney General Engel briefly acknowledged receipt; and Solicitor General Francisco called me to say he was not involved in the Special Counsel’s investigation and would not be reading the memorandum. To the best of my recollection, none of the President’s lawyers responded directly to the memorandum, but as I have noted, I subsequently had follow up conversations in which I explained my views.

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: I have not discussed my June 8, 2018 memorandum or the op-ed with former Attorney General Thornburgh.

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: As I explained in detail in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, my June 8, 2018 memorandum did not criticize Special Counsel Mueller’s investigation as a general matter. Rather, it discussed a potential theory that I thought, based on publicly available information, he may be pursuing at the time. As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials. For example, I recently expressed concerns to Attorney General Sessions and Deputy Attorney General Rosenstein regarding the prosecution of Senator Bob Menendez. Apart from the memorandum that I drafted in June 2018, I do not recall any other instance in which I conveyed my thoughts to the Department of Justice in my capacity as a former Attorney General in a legal memorandum.

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

RESPONSE: The remedy would depend upon the facts and circumstances of a particular violation. They could arise in a court of law, or in Congress, or from the People.

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: In approximately 1980, the federal judge for whom I clerked introduced me to someone I understood to be a consular officer from the Soviet Embassy, and I subsequently had several lunches with him at the request of the FBI. I debriefed the FBI following each meeting. This matter has been included in all of my subsequent background investigations. Other than that, to the best of my recollection and knowledge, I have not had contact or communications with anyone from the Russian government.

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: I understand that the scope of Title VII’s prohibition on sex-based discrimination in the workplace is currently pending in litigation, and the Department’s position is that it does not cover LGBT individuals. Of course, the scope of Title VII and the question whether LGBT individuals should be protected from workplace discrimination as a matter of policy are two different issues.

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: Congress prescribes the scope of the federal laws that it enacts, including the protections provided by federal civil rights laws. The Department is bound to enforce federal law as enacted by Congress and interpreted by the Supreme Court. If confirmed, I will be firmly committed to enforcing the laws that Congress has enacted, including laws that protect LGBT Americans.

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: Because I am not currently at the Department, I am not privy to the details regarding the Department’s position in these matters. Further, it would not be appropriate to comment on ongoing litigation. As with all matters, any decision to file an amicus brief will be based upon a thorough analysis of the facts and the governing law.

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: I believe in the separation of church and state. The Supreme Court has held that a public school may not endorse any particular religious belief system.

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: Yes, although the status of the President’s first order is no longer a live question. And in any event, the Supreme Court upheld the lawfulness of his revised Proclamation in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

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: Judicial review of any executive order is dependent on a variety of threshold justiciability requirements, including standing, ripeness, and a statutory basis for review. If a court finds that the relevant threshold requirements are satisfied, it is appropriate for the court to review the order's lawfulness and strike it down if it violates the Constitution or a statute.

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: A comprehensive response to the opioid epidemic should involve multiple lines of effort. This Administration has a three-pronged strategy to combat the opioid epidemic: prevention and education; treatment and recovery; and enforcement and interdiction. These efforts should be complementary and mutually reinforcing. I agree that we cannot incarcerate our way out of the opioid epidemic, but I also think that law enforcement plays a critical role in protecting public safety and reducing access to deadly drugs. If confirmed, I will look at ways in which the Department's enforcement efforts can reinforce treatment and recovery efforts, including federal reentry programs. Under my leadership, the Department's Bureau of Justice Assistance will continue awarding grants to support treatment initiatives at the state and/or local level. Finally, the Department will seek opportunities to work with other government agencies, like HHS, on initiatives that will promote public health and public safety.

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: Respectfully, I do not oppose “bipartisan sentencing reform.” As discussed in my letter to Leader McConnell and Senator Reid, the letter raised a specific policy concern, namely that the retroactive provisions of the Sentencing Reform and Corrections Act of 2015 would have released violent felons from federal prison and realigned our sentencing structure in profound ways. If confirmed, I intend to faithfully enforce and implement the recently enacted FIRST STEP Act.

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: If confirmed, I will engage in a review of the Department’s position in this case, which will include receiving input from the Solicitor General and other individuals within the Department, as well as from other relevant agencies within the federal government. Beyond that, I am not in a position to comment or make a commitment at this time.

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: As I testified in my hearing, keeping firearms out of the hands of prohibited persons must be a priority. If confirmed, I look forward to working with you and other members of the Committee to effectively address this priority.

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: I am not familiar with the specific studies you cite, but generally understand that the vast majority of federal firearms licensees comply with federal laws and regulations. I agree with your objective of focusing compliance and enforcement efforts on those licensees who do not comply with the law and, if confirmed, look forward to learning more about this issue from ATF.

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: States and localities around the country are reviewing the way fines and fees are assessed in the criminal justice process and exploring ways to improve the delivery of justice to victims, defendants, and the community, including through reforms to the use of fines and fees. I think that states and localities are right to be reviewing this issue and the Department should work with them to ensure that these reforms are effective.

- 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: The Eighth Amendment to the Constitution states that “Excessive bail shall not be required.” Consistent with the Constitution, I believe bail and other pre-trial restrictions should be imposed only to ensure public safety or that defendants comply with the justice process and appear in court as required. The Supreme Court has also reiterated that a defendant’s bail cannot be set higher than necessary to ensure the defendant’s presence at trial. That said, there is a diversity of practice on this issue in the states, in addition to considerable recent experimentation. I think the Department should work to ensure that any such reforms to money-bail systems effectively deliver justice to defendants, victims, and the community at large.

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: I know from my prior experience in the Department about the important work done by federal prosecutors in enforcing anti-corruption laws. If confirmed, I look forward to working closely with the Department’s prosecutors to root out corruption.

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: I am aware that the Department has identified intellectual property crime as a priority area due to the wide-ranging economic impact on U.S. businesses and, in some situations, the very real threat to the health and safety of the American public. If confirmed, the Department will continue to focus on prosecution of the most serious cases of trademark counterfeiting, trade secret theft, copyright piracy and the related criminal statutes protecting intellectual property.

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: My understanding is that the Department has prioritized the theft of valuable trade secrets, whether committed by an individual or as part of a systematic program of economic espionage directed by a foreign government. If confirmed, I look forward to supporting that important work.

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

RESPONSE: Please see my response to Question 28(a) above. If confirmed, I would examine this important issue to ensure the Department is working effectively – both by itself and in conjunction with other parts of the Executive Branch – to counter the threat of the criminal theft of trade secrets.

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: I know that Attorney General Sessions tasked a group of experts from across the Department, the Cyber Digital Task Force, to work on this issue. If confirmed, I look forward to reviewing their initial report describing the Department's existing efforts and working to examine further improvements to make the Department even more effective as this problem continues to evolve.

- 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: I am aware the Department has had many notable successes in extraditing cybercriminals. I am also aware that the Department has pursued charges against cybercriminals, even while they remain in countries with which we do not have an extradition treaty, such as China. If confirmed, I would support such efforts.

- 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: It is important to devote sufficient resources to the Department's cyber experts. If confirmed, I would examine this important question, within the constraints of the President's budget.

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

RESPONSE: I know the Department has a number of lines of effort across many of its components to enhance cooperation with the private sector on fighting cybercrime. If confirmed, I look forward to learning more about existing efforts and finding ways to improve them.

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: Yes, I am committed to exploring using the authority provided by Congress to ensure that we and our allies have effective and efficient means to obtain cross-border access to data needed for criminal investigations.

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: I cannot comment on a hypothetical question. It also would not be appropriate for me to comment on any matter that may be the subject of a pending investigation or pending litigation within the Department of Justice. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

- 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: If confirmed, I will be firmly committed to working with

Congress regarding legislation that supports the Department's mission and priorities.

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: As I noted during my confirmation hearing, I understand that the Department has policies and practices governing the use of law enforcement tools, including subpoenas, court orders, and search warrants, to obtain information or records from or concerning members of the news media in criminal and civil investigations. These policies ensure our nation's security and protect the American people while at the same time safeguarding the freedom of the press. In light of the importance of the newsgathering process, I understand that the Department views the use of tools to seek evidence from or involving the news media as an extraordinary measure, using such tools only after all reasonable alternative investigative steps have been taken, and when the information sought is reasonably required for a successful investigation or prosecution.

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: I do not recall this specific alleged representation and believe it to be incorrect as stated here. As I noted at the hearing, federal law at the time generally provided that HIV-positive individuals were inadmissible to the United States. My best recollection is that the Administration was nonetheless attempting to admit HIV-positive individuals who could claim asylum where they could also make an individualized showing for admission under the Attorney General's waiver authority. The Clinton Administration continued these policies and defended them in court.

- 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: I do not recall this specific alleged representation, but the Supreme Court itself noted that “the Haitian exodus expanded dramatically” during the six months after October 1991 and credited the President’s view that allowing fleeing Haitian emigrants into the United States “would have posed a life-threatening danger to thousands of persons embarking on long voyages in dangerous craft.”

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

RESPONSE: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, and if this matter arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

- 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: I have not been at Verizon for over a decade. Moreover, because I do not know the scope of the matter referenced in your question, and because I do not know all the facts and circumstances, I cannot commit to such a recusal at this time. If I am confirmed and a matter comes before me where I believe recusal might be warranted, I will review the facts, consult with career ethics officials at the Department, and will recuse myself whenever appropriate.

- 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: If confirmed, in any case where potential recusal issues arise, I will consult with career ethics officials at the Department and recuse myself whenever appropriate.

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: I commit that, if I am confirmed, the Department will stand ready, as always, to provide this Committee with technical assistance on any legislative proposal regarding music licensing. I also commit that, if confirmed, I will work with the Antitrust Division to ensure that this Committee is informed of the Division's intentions a reasonable time before it takes any action to modify or terminate the decrees.

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: I have not had the opportunity to review the programs currently offered by the Bureau of Prisons and presently have no basis to disagree or agree with the statement. If I am confirmed, I will fully and fairly enforce the laws within the Department's jurisdiction.

- 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: If I am confirmed, I look forward to reviewing the Bureau of Prisons' resource allocation in this area, current educational offerings, and inmate needs.

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

RESPONSE: I am not currently at the Department, and I am not familiar with details regarding educational programs provided by the Bureau of Prisons. Since I have not had the opportunity to review this matter, I am not in position to comment. If confirmed, I look forward to learning more about the educational programming offered by the Bureau of Prisons.

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

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more.

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: I would respond to any case presenting that question by consulting with the Solicitor General and other members of the Executive Branch to determine our position based on the facts of the case, the governing law, and the federal government's interests.

- 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: All Supreme Court decisions (except those that have been overruled) are entitled to respect under principles of *stare decisis*.

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

RESPONSE: The Supreme Court has explained that deciding whether to overrule precedent requires weighing (among other factors) whether a prior decision is correctly decided, well-reasoned, practically workable, consistent with subsequent legal developments, and subject to legitimate reliance interests.

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

RESPONSE: Yes, as noted above, it is one of several factors that are relevant under principles of *stare decisis*.

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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

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: I am generally aware that in the past several years the Tax Division has engaged in well-publicized and successful criminal and civil enforcement actions to combat offshore tax evasion. These efforts send the important message that violations of the tax laws will not be tolerated. If I am confirmed, I will work to support these efforts on behalf of the law-abiding taxpayers of this country.

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: President Trump’s June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien’s entry.

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

RESPONSE: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

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: Answering this question in the abstract is difficult. As I stated during the hearing, I would need to examine the specific statute being invoked by Congress to determine whether Congress has the constitutional authority to impose the limits or controls that you mention. As I mentioned during the hearing, that law review article was intended to be a “thought piece” rather than advancing a position on a specific controversy.

- 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: The question to which you refer was merely a rhetorical question presented as part of a “thought piece,” and I have not recently studied the answer to that question in detail. I will note, however, that Congress’s power to appropriate funds comes from several sources, such as

the Appropriations Clause and the Taxing and Spending Clause. Congress also has authority to appropriate funds for the raising of armies. Whether and in what circumstances Congress may exercise these powers in a way that might interfere with the President's own Constitutional authority by enacting limits on how funds are to be used is a hypothetical question that I cannot answer in the abstract.

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: I have not had the opportunity to study Amazon's use of most favored nation clauses and therefore have no opinion on the matter. If confirmed, I will discuss this issue with the Antitrust Division.

- 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: If confirmed, I will commit to discussing this issue with the Antitrust Division. As in all matters, we would look at the individualized facts of the situation and the applicable law to determine what the appropriate next steps might be.

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: Yes. As I understand, the Department is committed to protecting competition in labor markets as well as product markets. I further understand that the Antitrust Division has identified labor market concerns in past enforcement efforts, including its challenges to the Anthem/Cigna merger in 2016 and the Aetna/Prudential merger in 1999.

- 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: If confirmed, I will look forward to discussing with the Antitrust Division the types of data it seeks when issuing second requests.

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: Although I believe there can be legitimate uses of non-compete clauses, they potentially can raise concerns for American workers in certain circumstances.

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

RESPONSE: If I am confirmed, I will look forward to discussing this issue with the Antitrust Division.

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: I am generally aware of these reports, but I have not studied these allegations in detail. As I explained at my hearing, however, I am aware of concerns many have expressed regarding how technology platform companies have taken shape and whether those companies' practices may raise antitrust concerns. If confirmed, I look forward to learning more about these matters.

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: I am generally aware of these assertions, but I have not studied them or the underlying facts in detail. If confirmed, I look forward to discussing these important issues with the Antitrust Division.

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?

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

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

RESPONSE: Respectfully, the above question mischaracterizes my views as expressed in the article in several respects. The quotes mentioned above are taken out of context. In addition, the article was written in 1995, not 2017, as your question suggests.

As I stated during my hearing, “We are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity. But we can only survive and thrive as Nation if we are mutually tolerant of each other’s differences – whether they be differences based on race, ethnicity, religion, sexual orientation, or political thinking. Each of us treasures our own freedom, but that freedom is most secure when we respect everyone else’s freedom.”

The above questions call for speculation, and I cannot speculate on hypothetical questions. If confirmed, I would faithfully enforce all laws that protect individuals against discrimination. As in all matters, if faced

with these issues at the Department, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining any position or policy.

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: Yes.

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

RESPONSE: While I am not familiar with the current judicial-selection process, my understanding is that judicial candidates are not asked for their views on *Brown* or any other case.

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?

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

RESPONSE: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, and if the issue arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

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: The President’s authority to declare a national emergency, and the authorities that are triggered by such a declaration, would depend upon the specific facts and circumstances at the time. I have not examined those facts and circumstances beyond what has been reported in the media, and, therefore, I am not in a position to comment on this matter.

- b. What factors would you consider before advising the president to declare a national emergency? What do you think constitutes a national emergency?

RESPONSE: Congress has authorized the President to declare a national emergency under the National Emergencies Act, and that declaration may trigger authorities under other statutes. The terms of those statutes, the precedents of prior Presidents, and the factual determinations by the appropriate agencies within the Executive Branch should all inform the President’s decision. I have not examined the facts and circumstances pertaining to security on the southern border with this issue in mind, and therefore, I am not in a position to further comment on what would constitute a national emergency. If confirmed, I will ensure that the Department’s advice on this subject is consistent with any applicable law, including the National Emergencies Act.

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

RESPONSE: The Constitution and applicable statutes set forth the terms under which it is appropriate for the President to use the military in domestic matters. If confirmed, I will ensure that the Department of Justice’s advice is consistent with the Constitution and all other applicable law, including Title 10 of the U.S. Code and the Posse Comitatus Act.

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: As a general matter, I believe that attempts to impose criminal liability on political officials (whether in the Executive branch or in Congress) for performance of official duties based solely on the officials’ subjective intent raises difficult legal questions and can potentially create dangerous precedents. Nevertheless, in 1992, I personally requested the appointment of an independent counsel in connection with the “Passportgate” matter – an investigation that ultimately determined that no charges should be brought. In my view, it would not be appropriate for law enforcement to investigate people in order to gather political intelligence for a campaign.

**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: Neither Members of Congress, the public, nor I know all of the facts. That is why I believe that it is important that the Special Counsel be allowed to complete his investigation.

As I testified at the hearing, President Trump has repeatedly denied that there was collusion. It is understandable that someone who felt like he or she was being falsely accused would describe an investigation into him or her as a "witch hunt."

If confirmed, I will ensure that the Special Counsel finishes his work, and that all of the Department's investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence.

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: While your characterization of my position is not accurate, Deputy Attorney General Rosenstein’s response was entirely proper and commendable.

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: Yes. Whether the former official is paid or unpaid—and I was not paid in either of these instances—it can be appropriate and is not unusual for former Department officials to provide their views to current Department officials on pending matters through a variety of means, including personal conversations, legal memoranda, editorial articles, white papers, and law review articles.

- 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: I will consider the views raised and proceed in an appropriate manner.

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: I based my memo on information available to the public at the time through news media reports. To the best of my recollection, I did not receive any non-public or confidential information regarding the Special Counsel’s investigation.

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: As I described in my testimony, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. During the meeting, the President reiterated his public statements denying collusion and describing the allegations as politically motivated. I did not respond to those comments. The President also asked my opinion of the Special Counsel. As I testified, I explained that I had a longstanding personal and professional relationship with Special Counsel Mueller and advised the President that he was a person of significant experience and integrity.

On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation, and he did not ask me about what I would do about anything in the investigation.

On December 5, 2018, following President Bush's funeral, President Trump asked me

to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel’s investigation. The President has not asked me my views about any aspect of the investigation, and he has not asked me about what I would do about anything in the investigation.

The President has never sought any assurances, promises, or commitments from me of any kind, either express or implied, and I have not given him any, other than that I would run the Department of Justice with professionalism and integrity. The President has never asked for my “loyalty,” nor has he made any “threats” to me.

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 No. Under the governing regulations, the Attorney General, as the head of an agency, makes the final decision on whether to recuse under 5 C.F.R. § 2635.502. See 5 C.F.R. § 2635.102 (“Any provision [of this part] that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.”). In addition, Mr. Shaub is citing a regulation, 5 C.F.R. § 2635.502(c), which applies only to appearance problems arising from a financial interest or a covered relationship. When other circumstances may raise a question regarding an employee’s impartiality, the employee follows the procedures of section 2635.502, but the ultimate recusal decision is left to the employee himself. See 5 C.F.R. § 2635.502(a)(2).

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: If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

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: As I stated during my hearing before the Committee, I agreed with the conclusions in Deputy Attorney General Rosenstein’s memorandum regarding former FBI Director Comey’s handling of the Clinton email investigation. As a general matter, I do not believe that it is the role of the Attorney General to comment on, criticize, or censor the President’s public statements.

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: I do not know whether the President’s decision to remove former FBI Director Comey is an aspect of the Special Counsel’s ongoing investigation. If confirmed, it is possible that I will be supervising that investigation as Attorney General under applicable regulations. Accordingly, as a nominee, it would not be appropriate for me to answer your question.

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: No.

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: Yes.

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: The public’s interest in “transparency and confidence in the system” are important considerations when considering conflict-of-interest issues, as are American’s constitutional rights, including those guaranteed by the First Amendment.

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: As I said at the hearing, I have not had an opportunity to study the issues raised by this question in detail and therefore do not have an opinion on the matter at this time. If confirmed, and if the issue arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

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: President George H.W. Bush issued an eloquent proclamation explaining why he believed those pardons were required by “honor, decency, and fairness.” Among his reasons were that the United States had just won the Cold War and the individuals he pardoned had long and distinguished careers in that global effort. As President Bush explained, the individuals he pardoned had four common denominators: (1) they acted out of patriotism; (2) they did not seek or obtain any profit; (3) each had a long record of distinguished service; and (4) they had already paid a price grossly disproportionate to any misdeeds.

- 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: The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. If confirmed, I would advise the President to carefully consider these and other appropriate factors in exercising his pardon power.

- 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: To my knowledge, the President has not pardoned anyone subject to a current or future indictment in connection with the Special Counsel’s investigation. As the nominee for Attorney General, I do not believe that I should address hypotheticals that may relate to the ongoing investigation.

- 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: The President has an obligation to take care that the laws be faithfully executed and to exercise his authority in the best interests of the country.

Please also see my answer to Question 14(b) above.

- 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: I am not familiar with the facts and circumstances of the cases of those who have been convicted in connection with those investigations apart from media reports. I am not in a position to speculate about how I might advise the President in such circumstances.

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: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

- 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: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

- 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: If confirmed, I will be pleased to work with Congress regarding legislation that supports the Department’s mission and priorities.

- 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: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. I understand from publicly available information that *Veasey v. Abbott* did not involve a change in legal position by the Department. Rather, it involved a change in law by the Texas Legislature. In particular, in 2017 the Texas Legislature amended the challenged voter ID law to largely incorporate the interim remedy that the federal courts had put in place for the 2016 election. In its most recent decision in this case in 2018, the Fifth Circuit agreed with the Department that this amendment was sufficient to remedy the alleged defects in the original law.

I also understand from publicly available information that the Supreme Court upheld the Department’s position in *Husted v. A. Philip Randolph Institute*.

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?
- b. Do you agree that voter fraud is incredibly rare in the context of the number of votes cast?

RESPONSE: I have not studied this issue and therefore have no basis to reach a conclusion on it.

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: I am not familiar with this study and, beyond what I have seen reported in the media, have no knowledge of the facts and circumstances surrounding these issues. As a result, I am not in a position to comment on this matter.

- 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: Please see my response to Question 18(a) above.

- 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: In its discharge of its legal obligations, the Department should investigate all allegations that fall within the Department’s jurisdiction. If confirmed, I would work vigorously to uphold and enforce the federal laws within the Civil Rights Division’s jurisdiction.

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?
- b. If confirmed, what steps will you take to support and promote community-oriented policing?

RESPONSE: As I am not currently at the Department, I am not familiar with the details of this particular program. If confirmed, I look forward to learning more about this issue. It is my understanding that the COPS Office and its program efforts continue to promote police and community engagement promoting responsibility and accountability. Working with law enforcement agencies to promote effective crime fighting, combined with a strong community engagement partnership, is a promising approach and creates mutual benefits for the law enforcement agencies and the communities being served.

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?
- 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: As I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this specific matter. I note that Congress has enacted statutes that expressly impose disparate-impact liability, and the Supreme Court has recognized that other statutes also

impose disparate-impact liability. The Department is charged with enforcing all of the laws that Congress has enacted where warranted by the facts, the law, and Department policies and priorities. As with all matters, any decision to pursue an enforcement action based upon disparate-impact liability will be based upon a thorough analysis of the law, the facts, and Department policies and priorities.

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: In my written testimony to the Committee, I emphasized the benefits of a diverse society. Specifically, I stated: “We are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity.” I do not believe that policies that promote diversity must necessarily result in discrimination against other groups. It is my understanding that the lawsuit referenced in your question is currently pending, and that the Department of Justice has filed a statement of interest. In light of this, it would not be appropriate for me to comment further.

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: I have not studied this issue, however, it is my understanding that the grant programs administered by the Office on Violence Against Women (OVW) improve responses to sexual assault, domestic violence, dating violence, and stalking against all victims, including providing services for all victims. The 2013

reauthorization of VAWA, in addition to enacting the nondiscrimination provision, expanded VAWA's definition of underserved populations to include populations who face barriers in accessing services because of sexual orientation and gender identity. If confirmed, I look forward to learning more about this issue and the needs of victims and the work of the Department.

- b. Should you be confirmed, how will you ensure that LGBTQ survivors of violence are included and represented in the services of OVW?

RESPONSE: If I am confirmed, I will enforce all federal laws, including the 2013 reauthorization of VAWA. Although I am not currently at the Department, it is my understanding that programs funded by OVW have always served all victims, and VAWA contains provisions specifically addressing the provision of services to victims underserved because of sexual orientation and gender identity. If I am confirmed, I will ensure that VAWA programs, and the funds made available for them by Congress, are employed in the most effective manner possible in furtherance of their stated missions.

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: It is my understanding that the Department of Homeland Security is responsible for implementing VAWA's immigration protections for victims. However, the Department's Office on Violence Against Women (OVW) administers VAWA's grant programs, which include a number of provisions designed to ensure that services reach non-citizen victims of domestic violence, sexual assault, dating violence, and stalking. If I am confirmed, I will enforce all federal laws, including VAWA, and work to ensure that VAWA programs are implemented in the most effective manner possible in furtherance of their stated missions.

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: If I am confirmed, I will continue to support the Office on Violence Against Women’s (OVW) priority of addressing the needs of American Indian, Alaska Native, and Native Hawaiian victims. It is my understanding that OVW administers multiple grant programs to help ensure that Native Hawaiian, Alaska Native, and American Indian victims of these crimes receive needed services and that offenders are held accountable. I look forward to learning more about this important work.

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 “crook”?
 - 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: As the father of three daughters, all of whom are practicing attorneys, I have always believed strongly in the issue of equality for women in the workplace and elsewhere. It is an unfortunate fact that women historically have been discriminated against in a number of areas, including the workplace. Although we have made great strides as a society over the years, work remains to be done, as the “Me Too” movement and others have dramatically demonstrated. If confirmed, I will continue the Department of Justice’s important work enforcing the federal civil rights laws, including with respect to sex-based discrimination.

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: As I stated at the hearing, I would respond to any such case by consulting with the Solicitor General and other relevant members of the Executive Branch to determine our position based on the facts of the case, the governing law, and the federal government’s interests.

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: I am not familiar with the details of that legislation. If confirmed, I can commit to working with Congress regarding legislation that supports the Department’s mission and priorities.

- b. Do you believe the ADA goes too far in protecting the rights of people with disabilities?

RESPONSE: If confirmed, I will enforce vigorously all federal civil rights laws enacted by Congress, including the ADA.

- c. If confirmed, will you allow the Disability Rights Section of the Civil Rights Division to robustly enforce the ADA?

RESPONSE: Please see my response to Question 26(b) above.

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: Your question compares commentary addressing two very different scenarios. As I explained in my op-ed, acting Attorney General Yates refused to defend an executive order signed by the President. If one or more of the political branches, such as the president or Congress, take an action that is reasonably defensible under the law, such as by issuing an executive order or passing a statute, then I believe that action is entitled to considerable weight and that the Department of Justice generally has an obligation to defend it in good faith. A different situation is presented by a regulation that is inconsistent with an underlying statute. In such a scenario, a federal agency arguably has taken an action that is inconsistent with the will of two political branches – both the president and Congress – as expressed in a statute. As I explained to Senator Simon, on those facts, the Department of Justice may be justified in refusing to defend the regulation based on that inconsistency.

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: My November 2017 comments to the New York Times were based on

media reporting regarding the Uranium One case and the Special Counsel’s investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. Politics should never be part of the analysis of whether to launch a particular criminal investigation or prosecution. I am not aware of the extent to which the Uranium One case has been pursued by the Department of Justice, but as I noted during my hearing, it is my understanding from public reporting that U.S. Attorney John Huber may be looking into the matter.

As I stated during my hearing, I believe that it is in the best interest of everyone, the president, Congress, and the American people, that the investigation into Russian attempts to interfere in the 2016 election be resolved by allowing the Special Counsel to complete his work.

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?
 - b. How will it be different from any existing investigations into what the FBI was investigating related to the 2016 elections?
 - 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: I did not commit to conduct any investigations; I promised only to look into issues of concern to the Chairman and noted that an investigation may be underway right now.

In the hearing, Chairman Graham raised the issue of numerous inappropriate text messages exchanged by two FBI employees that appear to document personal or political bias for Secretary Clinton and prejudice against President Trump. Chairman Graham also spoke to the FBI’s potential use of the Steele-authored “dossier” as a basis to obtain a Foreign Intelligence Surveillance Act (FISA) warrant from the FISA Court. FBI investigations must be based on the law and the facts, and should be conducted without regard to political favoritism. If confirmed, I will seek to better understand what internal reviews of these and related matters were undertaken, including any investigations conducted by the Inspector General, United States Attorney John Huber, and the Department’s ethics and professional responsibility offices.

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?
- b. What evidence do you have to doubt the integrity of a decision made by the Foreign Intelligence Surveillance Court (FISC)?
- c. Do you think it is wise to launch a politically-motivated investigation into decisions by the FISC?

RESPONSE: Please see my response to Question 29 above.

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: The legality of any hypothetical declaration of national emergency would depend on the specific facts and circumstances at the time. I have no knowledge of whether a national emergency will be declared nor of the facts and circumstances relevant to such a declaration beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter.

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: As a private citizen, my knowledge of the Zero Tolerance Initiative is based on what is publicly available and what has been reported by news media.

Prior to making any judgment on the policy, I would need to review relevant statistics and data and understand other relevant factors and considerations, as well as review any developments in immigration law. I also note that President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

- 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: President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry. If confirmed, I will evaluate this policy and other directives to determine how best to continue enforcement of the United States' immigration laws while balancing the Department's other priorities and resources.

- 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: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units, but my understanding is that the Department of Homeland Security makes the decision as to whom they apprehend, whom they refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry. If confirmed, I will evaluate this policy and other directives to determine how best to continue enforcement of the United States' immigration laws while balancing the Department's other priorities and resources.

- 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: The Administration has deemed enforcement of immigration-related offenses a priority. If confirmed, I will evaluate this memo and other directives to determine how best to prioritize immigration enforcement while balancing the Department's other

priorities and resources.

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: Because this issue is in active litigation, it would not be appropriate for me to comment on it specifically. But the Department of course complies with court orders and will continue to do so if I am confirmed.

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: Pursuant to 8 C.F.R. § 1003.1(h)(1)(i) (2018), the Attorney General may direct the Board of Immigration Appeals to refer cases to him or her for review of its decisions. Attorneys General of both parties have exercised this authority for decades. Regarding any specific referred cases, it is my understanding that these issues are the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on those matters.

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: The Immigration and Nationality Act provides that an “immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.” Beyond that, I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter. I am committed to ensuring that immigration judges are supervised appropriately to ensure effective and efficient processing of immigration cases consistent with due process and other

applicable law.

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: I am not yet familiar with the current specific operations of immigration courts in cases involving minors, but it is my general understanding that all respondents in immigration proceedings, including minors, are afforded protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. I understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

- 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: By regulation, immigration judges exercise “independent judgment and discretion.” Additionally, by regulation, they are required to resolve cases in a “timely and impartial manner.” I am not familiar with the details of the legislation discussed above. If confirmed, I can commit to working with the Committee regarding legislation that supports the Department’s mission and

priorities.

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: At my hearing, I committed to pursuing a justice system that is fair to all Americans. As I stated, it is the Attorney General's responsibility to enforce the law evenhandedly and with integrity. If confirmed, I will take whatever steps are available to me to ensure that our nation's laws are enforced fairly and impartially and that all Americans are treated equally under the law, without regard for economic status or racial or ethnic background.

- b. Will you commit to reinstating the Office for Access to Justice by reallocating resources to this office?

RESPONSE: The Office for Access to Justice did not exist when I was last at the Department. I believe its mission to help the justice system deliver outcomes that are fair and accessible to all is important, and I can commit that, if confirmed, I will ensure that this mission is continued.

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: I understand the work of the Legal Services Corporation (LSC) and the role that they have played within the legal framework of the country. While LSC is not part of the Department's Budget, and I am not familiar with their current budget request, if confirmed, I look forward to working with Congress and the Administration on resource allocations, needs, and funding proposals.

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: If confirmed, I would ensure that the Juvenile Justice Reform Act of 2018 is effectively and appropriately implemented according to its terms. As I have said throughout my career, early intervention—which includes mentorship, research-based programs, and capacity-building of mentor organizations and sponsors—is critical to keeping juveniles on the right path, and the Department supports critical work in this area. But those who break the law – especially those who commit serious violent crimes – must be held accountable as provided by law.

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: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. My comments as Attorney General reflected that context. I believe “good time” credits are helpful in ensuring appropriate behavior in prison. Regardless, if confirmed, I would faithfully enforce and implement the FIRST STEP Act and the procedures by which offenders might be eligible for earned good time credits.

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: If confirmed, I commit to using the WTA and RITA authorities to the extent permitted by law and consistent with the Department’s budgetary limitations. I understand the Department is currently making good use of these authorities.

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?
- 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: The proper litigation strategy in any case depends on its facts and the applicable law. The Supreme Court’s rules permit requests for emergency relief, and those requests can be appropriate in some circumstances—for example, when a lower court has entered an extraordinary form of relief such as a nationwide injunction of a significant Executive Branch policy. If confirmed, I would consider each case carefully on its facts and the applicable law.

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: I know and have confidence in Assistant Attorney General Engel and in the Office of Legal Counsel. Indeed, I have known some of OLC’s attorneys since I ran the office nearly 30 years ago. I do not know the author of

the *Washington Post* op-ed, who works for an advocacy group espousing the notion that the United States has “seen an unprecedented tide of authoritarian-style politics sweep the country.” However, the author’s statement that “[w]hen OLC approves orders such as the travel ban, it goes over the list of planned presidential actions with a fine-toothed comb, making sure that not a hair is out of line” certainly reflects my experiences with the Office.

As I stated in my confirmation hearing, “I love the department . . . and all its components . . . I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I’d like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity . . . And I feel that I’m in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I’m going to do what I think is right.”

- 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: I have no reason to believe that the premise of your question is correct. If I am confirmed, however, the Department will work to meet the Committee’s information and oversight needs, consistent with the Department’s law enforcement, national security, and litigation responsibilities.

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: I believe judicial nominees should answer any questions that are appropriate under the Code of Conduct for United States Judges and relevant Senate precedent.

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: I am not familiar with the current judicial-selection process, but the text of Article II entrusts the nomination of federal judges to the President, with the advice and consent of the Senate.

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: As I stated during my hearing before the Committee, President Trump has sought no assurances, promises, or commitments from me of any kind, express or implied, regarding my service as Attorney General and I have not given him any, other than that I would run the Department of Justice with professionalism and integrity. During my hearing, I testified that, if I were ever directed to do something unlawful, I would resign rather than carry out the order.

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?

RESPONSE: I would resign rather than follow an order to terminate the Special Counsel without good cause.

- 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

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.

you refuse to carry out an order from President Trump to fire Special Counsel Mueller, as you pledged to this Committee?

RESPONSE: Please see my response to Question 1(a) above.

- 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: I do not believe that the Special Counsel regulations should be amended during the current Special Counsel’s work and would resign rather than alter the regulations for the purpose of firing the Special Counsel without good cause. As I testified, I believe that Robert Mueller should be allowed to finish his investigation. Any review of the existing regulations should occur following the conclusion of the Special Counsel’s work.

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

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.

regulations— namely, whether public release “would be in the public interest”?¹²

RESPONSE: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” *See* 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel’s report is to be “handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

3. In a July 2017 interview, you said that you “would have liked to see [Special Counsel 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: In my interview statement, I was making the point that the apparent reason Deputy Attorney General Rosenstein appointed the Special Counsel was to

¹² *Id.* § 600.9(c).

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>.

buttress public assurance that the investigation would be nonpartisan. The eventual make-up of the Special Counsel’s team caused many in the public to question that impartiality, which undermined that goal. It is never appropriate to ask any career employee, prosecutors included, about their political views. In general, it is a prohibited personnel practice and a violation of merit system principles to consider a career employee’s political affiliation in the management of the federal workforce, which can include the assignment of work. See 5 U.S.C § 2301(b)(2); 5 U.S.C. § 2302(b)(1)(E).

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: The President has the constitutional duty to take care that the laws are faithfully executed. On enforcement matters, the Department’s investigative and prosecutorial decisions should be based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and Department officials should make these decisions free of bias or political influence.

The Department, generally, and the Attorney General, specifically, also play two important other roles. First the Attorney General provides legal advice to the President. Second, the Attorney General assists in forming and executing the Administration’s policy related to law enforcement issues. It is entirely appropriate for the President to involve himself or herself in these Department functions.

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

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.*

interests . . . appear to have the improper purpose of influencing and impeding an ongoing criminal investigation”?

RESPONSE: I believe that the Special Counsel should be allowed to finish his work, and if confirmed it will be my intent to ensure that his investigation is completed without inappropriate outside influence. I am not in a position to speculate on the motivations behind any given comment, but I know Robert Mueller personally and I am confident that he is not affected by commentary or criticism.

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

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: Ordinarily, I would not expect the termination or removal of the head of an agency or office to impede investigations pending in that agency or office. As I stated in my editorial, the investigation into Russian interference in the 2016 election continued under the supervision of Deputy Attorney General Rosenstein and then-acting Assistant Attorney General Dana Boente even after the removal of former FBI Director Comey. And a short time after Mr. Comey’s removal, Special Counsel Mueller was appointed to take over the matter. In light of this, and the public actions taken by the Special Counsel since, I have no reason to believe that removing Mr. Comey had any adverse impact on the “integrity of the Russian investigation.”

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.

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.

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>.

RESPONSE: I do not have complete records reflecting all of the clients that I have represented over the course of my four-decade legal career. After leaving the Department of Justice in 1993, I worked in-house for a single U.S. corporation until 2008. Since then, I have represented a handful of corporate clients as a private attorney, none of which, to the best of my knowledge, represent a foreign government's interests. To the best of my recollection, any foreign clients that I have represented during my time as a private attorney are reflected in the questionnaire that I submitted to the Committee. Those clients include the government of the Philippines, which I represented in connection with litigation against Westinghouse, as well as Taiwan Power, which I understood to be a utility owned in part by the Taiwanese government.

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: On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel’s investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation, and he did not ask me about what I would do about anything in the investigation.

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
 - a. If President Trump told you that he was considering pardoning members of his

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>.

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: President George H.W. Bush issued an eloquent proclamation explaining why he believed those pardons were required by “honor, decency, and fairness.” Among his reasons were that the United States had just won the Cold War and the individuals he pardoned had long and distinguished careers in that global effort. As President Bush explained, the individuals he pardoned had four common denominators: (1) they acted out of patriotism; (2) they did not seek or obtain any profit; (3) each had a long record of distinguished service; and (4) they had already paid a price grossly disproportionate to any misdeeds.

The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. Under the Constitution, the President’s power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. A president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate. And as I explained in my testimony, under applicable Department of Justice policy, if a President’s actions constitute a crime, he or she may be subject to prosecution after leaving office. If confirmed, I will consult with the Office of Legal Counsel and other relevant Department personnel regarding any legal questions relating to the President’s pardon authority.

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: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any decisions regarding whether to bring enforcement actions under the Voting Rights Act will be based on a thorough analysis of the facts and the governing law.

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

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>.

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: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, including through enforcement of Section 2 of the Voting Rights Act where warranted upon a thorough analysis of the facts and governing law.

- 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
 - 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 90 days of your tenure should you be confirmed?

RESPONSE: I understand from publicly available information that *Veasey v. Abbott* (formerly *Veasey v. Perry*) did not involve a change in legal position by the Department. Rather, it involved a change in law by the Texas Legislature. In particular, in 2017 the Texas Legislature amended the challenged voter ID law to largely incorporate the interim remedy that the federal courts had put in place for the 2016 election. In its most recent decision in this case in 2018, the Fifth Circuit agreed with the Department that this amendment was sufficient to remedy the alleged defects in the original law.

12. Since the Supreme Court's decision in *Shelby County v. Holder*,²⁷ states across the country

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).

²⁷ 570 U.S. 529 (2013).

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: I have not studied these issues and therefore have no basis for reaching any conclusions regarding them. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

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 lesser means.³⁰
 - a. Do you agree that voter ID laws disproportionately disenfranchise people of color and people of lesser means?

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>.

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>.

- 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: I have not studied these issues and therefore have no basis for reaching any conclusions regarding them. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

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: As I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this specific matter.

I will note that Congress has enacted statutes that expressly impose disparate-impact liability, and the Supreme Court has recognized that other statutes also impose disparate-impact liability. The Department is charged with enforcing all of the laws that Congress has enacted where warranted by the facts, the law, and Department policies and priorities. As with all matters, any decision to pursue an enforcement

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.*

action based upon disparate-impact liability will be based upon a thorough analysis of the law, the facts, and Department policies and priorities.

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 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: As discussed at my hearing, I do not intend to go after parties who have complied with state law in reliance on the Cole Memorandum. I have not closely considered or determined whether further administrative guidance would be appropriate following the Cole Memorandum and the January 2018 memorandum from Attorney General Sessions, or what such guidance might look like. If confirmed, I will give the matter careful consideration. But I still believe that the legislative process, rather than administrative guidance, is ultimately the right way to resolve whether and how to legalize marijuana.

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

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>.

- 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: I firmly believe that prosecutors should enforce federal law as passed by Congress, while having the discretion to ensure that justice is done in every case. If confirmed, I will ensure that the Department's charging and sentencing policies demand a fair and equal application of the laws passed by this body, while providing the necessary flexibility to serve justice.

- 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: Please see my response to question 16(a) above.

- 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 cases?

RESPONSE: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter.

- 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: It is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to accommodate the Committee's information needs, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will be pleased to work with Congress through the Department's Office of Legislative Affairs to provide appropriate information.

- 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: As with any proposed legislative changes to current criminal statutes, if confirmed, I would welcome the opportunity to work with Congress on this issue.

³⁸ *Id.*

- 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: I understand that the Department works to accommodate the Committee’s information and oversight needs, consistent with the Department’s law enforcement, national security, and litigation responsibilities. If confirmed, I will be pleased to work with Congress through the Department’s Office of Legislative Affairs to provide appropriate information.

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: I have not had the opportunity to study this report. If confirmed, I look forward to learning more about it.

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: Trust between communities and law enforcement is critical to combating crime and keeping people safe. If confirmed, I will ensure that the Department continues to implement policies and programs intended to enhance the trust between the police and the communities they serve, whether through the Office of Community Oriented Policing Services, training and technical assistance provided by the Office of Justice Programs, or through national programs like the reinvigorated Project Safe Neighborhoods initiative, which brings together communities and all levels of law enforcement to collaboratively develop comprehensive strategies tailored to local violent crime conditions, issues, and resources. Collaborative approaches, where law enforcement and communities work together, will help rebuild trust and make communities across the country safer for everyone.

19. In the period leading up to Operation Desert Storm in the Gulf War, the FBI engaged in

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>.

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 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: I am committed to the enforcement of federal laws and applicable regulations consistent with the Constitution. Unbiased law enforcement practices strengthen trust in law enforcement and foster collaborative efforts between law enforcement and communities to fight crime and ensure public safety. I do not believe that an individual’s particular race, ethnicity, religion, or national origin makes that person more dangerous or more likely to commit a crime. If confirmed, I will work to ensure that the Department’s resources are aligned to most effectively protect the public.

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?

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.*

- 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: I am not familiar with the Brookings Institution study you cite, and I have not studied the issue of implicit racial bias in our criminal justice system. Therefore, I have not become sufficiently familiar with the issue to say whether such bias exists. I believe the data confirm that people of color are disproportionately represented in our nation's jails and prisons. I reaffirm the commitment I made to you during my hearing that, if confirmed, the Department of Justice will work with its Bureau of Justice Statistics to examine racial disparities and the policies that may contribute to them.

21. According to Pew Charitable Trusts, in the 10 states with the largest declines in their 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: I have not studied this issue and do not know if there is a direct link between increases of a state's incarcerated population and decreased crime rates. Therefore, I have no basis on which to reach a conclusion on it.

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: I believe that there is strong consensus within the law enforcement community, with which I agree, that diversity among law enforcement personnel is positive. The question of how to achieve that diversity can be more divisive, however. Efforts to achieve diversity must be consistent with the individual rights protected by the Constitution and other federal laws.

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.*

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 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”?

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.*

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.*

RESPONSE: As I stated at the hearing, we need border security measures—including appropriate physical barriers—to properly secure our southern border. It is my understanding that the Department of Homeland Security apprehends hundreds of thousands of illegal aliens every year, and a physical barrier, in addition to other appropriate measures, would be helpful in preventing future illegal entries, as well as combatting transnational drug smuggling and human trafficking.

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?
- b. If you believe that immigrants are prone to criminality, what studies are you relying on in making that judgment?

RESPONSE: It has been my experience that people of all backgrounds commit crimes.

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: I am not familiar with studies reaching this conclusion, and I have not studied this issue. Therefore, I have no basis for reaching a conclusion on this issue.

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.*

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.*

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: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units but my understanding is that the Department of Homeland Security makes the decision as to whom they apprehend, whom they refer for criminal prosecution, and whom they will hold—subject to applicable law. President Trump’s June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien’s entry.

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.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

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>.

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.*

- 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: My understanding is that the Department of Homeland Security makes the decision as to who they are going to apprehend, who they are going to refer for criminal prosecution, and who they will hold—subject to applicable law. I cannot comment on matters within the purview of the Department of Homeland Security. It is also my understanding that part (a) of your question is a subject that is presently in ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me comment on this matter.

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: It is my understanding that this issue is the subject of ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

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 participation in the 2020 Census. Many vulnerable communities do not trust the federal

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.*

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: It is my understanding that this matter is the subject of ongoing litigation. While I am not involved in that litigation, it would not be appropriate for me to comment on this matter.

30. Across the economy, the largest companies are taking over an ever greater share of the

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>.

market—conducting mergers, acquiring other companies, and squeezing smaller 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?

RESPONSE: I have not yet had a chance to study this question. I would like to better understand the dynamics that are shaping the market outcomes that we are observing. I am interested in learning more from the Antitrust Division about its enforcement efforts, the current state of the law and economics, and explanations for any increases in concentration.

- 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?

RESPONSE: Yes. If confirmed, I will ensure that the Antitrust Division appropriately and effectively enforces all antitrust laws to protect competition and consumers.

- c. In your estimation, at what point does market concentration become excessive?

RESPONSE: I have not had the opportunity to study the implications of market concentration on competition and therefore currently have no opinion on the matter. If confirmed, I look forward to discussing these issues with the Antitrust Division.

- 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?

RESPONSE: I understand that the Antitrust Division has responsibility under Section 7 of the Clayton Act to investigate and, if appropriate, challenge mergers that may substantially lessen competition. If confirmed, I will ensure

⁷³ See Cory Booker, *The American Dream Deferred*, BROOKINGS INST. (June 2018), <https://www.brookings.edu/essay/senator-booker-american-dream-deferred>.

that the Antitrust Division fulfills that obligation in ways that promote consumer welfare.

- 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: I have not had the opportunity to study concentration in the agricultural sector and its implication on competition. I agree that the agriculture sector, including small family farmers, is an important part of the US economy. If confirmed, I look forward to discussing this topic with the Antitrust Division.

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: As I stated during my hearing before the Committee, I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including applicable regulations, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

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: The applicable regulations provide that the Special Counsel will make a “confidential report” to the Attorney General “explaining the prosecution or declination decisions reached by the Special Counsel.” See 28

C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel’s report is to be “handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed” through the Attorney General’s reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must “notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel’s investigation.” 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General’s notification if he or she concludes that doing so “would be in the public interest, to the extent that release would comply with applicable legal restrictions.” *Id.* § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel’s work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department’s longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

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: As I am not currently at the Department of Justice, I am not familiar with the Department’s decisions regarding this issue or the facts on which these decisions have been made. As a general matter, I believe the Department should refrain from commenting on ongoing investigations and cases, as well as closed matters. Because this appears to be an ongoing issue, and because I am not familiar with the particulars of the underlying decisions, I am unable to comment further.

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

**Letter from William P. Barr, nominee to be Attorney General of the
United States, to Chairman Lindsey Graham, Senate Committee on
the Judiciary (January 14, 2019)**

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

January 14, 2019

Dear Chairman Graham:

Thank you for taking the time to meet with me last week. I appreciated the opportunity to speak with you about my upcoming hearing before the Senate Judiciary Committee and my plans for the Department of Justice if I am confirmed.

During our meeting, you asked me about the legal memorandum that I drafted as a private citizen in June 2018, a copy of which I provided to the Committee last month. Although the memorandum is publicly available and has been the subject of extensive reporting, I believe there may still be some confusion as to what my memorandum did, and did not, address.

As I explained in my January 10, 2019 letter responding to questions posed by Ranking Member Feinstein, the memorandum did not address – or in any way question – the Special Counsel’s core investigation into Russian efforts to interfere with the 2016 election. Indeed, I have known Bob Mueller personally and professionally for 30 years, and I have the utmost respect for him and the important work he is doing. When Bob was appointed, I publicly praised his selection and expressed confidence that he would handle the investigation properly. As I noted during our discussion, I personally appointed and supervised three special counsels myself while serving as Attorney General. I also authorized an independent counsel under the Ethics in Government Act. I believe the country needs a credible and thorough investigation into Russia’s efforts to meddle in our democratic process, including the extent of any collusion by Americans, and thus feel strongly that that the Special Counsel must be permitted to finish his work. I assured you during our meeting – and I reiterate here – that, if confirmed, I will follow the Special Counsel regulations scrupulously and in good faith, and I will allow Bob to complete his investigation.

As for the memorandum itself, as we discussed during our meeting, the memorandum’s analysis was narrow in scope. It addressed a single obstruction-of-justice theory under a specific federal statute, 18 U.S.C. § 1512(c), that I thought, based on public information, Special Counsel Mueller might have been considering at the time. The memorandum did not address any of the other obstruction theories that have been publicly discussed in connection with the Special Counsel’s investigation.

The principal conclusion of my memo is that the actions prohibited by section 1512(c) are, generally speaking, the hiding, withholding, destroying, or altering of evidence – in other words, acts that impair the availability or integrity of evidence in a proceeding. The memorandum did not suggest that a President can never obstruct justice. Quite the contrary, it expressed my belief that a President, just like anyone else, can obstruct justice if he or she engages in wrongful actions that impair the availability of evidence. Nor did the memorandum claim, as some have incorrectly suggested, that a President can never obstruct justice whenever he or she is exercising a constitutional function. If a President, acting with the requisite intent, engages in the kind of evidence impairment the statute prohibits – regardless whether it involves the exercise of his or her constitutional powers or not – then a President commits obstruction of justice under the statute. It is as simple as that.

During our meeting, you asked why I drafted the memorandum. I explained that, as a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony. For example, immediately after the attacks of September 11, 2001, I reached out to a number of officials in the Bush administration to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. More recently, I have offered my views to officials at the Department on a number of legal issues, such as concerns about the prosecution of Senator Bob Menendez.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under section 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not just by future Presidents, but by all public officials involved in administering the law, especially those in the Department. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, 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. I discussed my views broadly with lawyer friends; wrote the memo to senior Department officials; shared it with other interested parties; and later provided copies to friends. I was not representing anyone when I wrote the memorandum, and no one requested that I draft it. I wrote it myself, on my own initiative, without assistance, and based solely on public information.

You requested that I provide you with additional information concerning the lawyers with whom I shared the memorandum or discussed the issue it addresses. As the media has reported, I provided the memorandum to officials at the Department of Justice and lawyers for the President. To the best of my recollection, before I began writing the memorandum, I provided

my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. During my interactions with these Department officials, I neither solicited nor received any information about the Special Counsel's investigation. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views.

As I explained during our meeting, I frequently discuss legal issues informally with lawyers, and it is possible that I shared the memorandum or discussed my thinking reflected in the memorandum with other people in addition to those mentioned above, including some who have represented clients in connection with the Special Counsel's work. At this time, I also recall providing the memorandum to, and/or having conversations about its contents with, the following:

- Professor Bradford Clark
- Richard Cullen
- Eric Herschmann
- Abbe Lowell
- Andrew McBride
- Patrick Rowan
- George Terwilliger
- Professor Jonathan Turley
- Thomas Yannucci

The foregoing represents my best recollection on these issues at this time. I look forward to discussing these issues further with you and your colleagues at my upcoming hearing.

Sincerely,

A handwritten signature in blue ink that reads "W.P. Barr".

William P. Barr

**Letter from William P. Barr, nominee to be Attorney General of the
United States, to Ranking Member Diane Feinstein, Senate
Committee on the Judiciary (January 10, 2019)**

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

January 10, 2019

Dear Senator Feinstein:

Thank you for your letter of December 21, 2018 regarding a memorandum that I drafted earlier last year, a copy of which I provided to the Senate Judiciary Committee last month.

As you note, my memorandum was narrow in scope, addressing only a single obstruction theory that I thought, based on public information, the Special Counsel might have been considering. The memorandum did not address – or in any way question – the Special Counsel’s core investigation into Russian interference in the 2016 election. Indeed, I have known Bob Mueller personally and professionally for 30 years, and I have the utmost respect for him and the important work he is doing. Having appointed and supervised three special counsels myself while Attorney General, I understand that the country needs a credible and thorough investigation into Russia’s efforts to meddle in our democratic process, including the extent to which any Americans were involved. For this reason, it is vitally important that the Special Counsel be permitted to finish his work. I will carry out the Special Counsel regulations scrupulously and in good faith, and I will allow Bob to complete his work.

Given my background, I am naturally interested in legal issues that have significant implications for our country. I have a deep commitment to the law and I enjoy researching, analyzing, and writing about legal issues. I frequently discuss my views with friends, colleagues, and public officials, and I have worked on a number of amicus briefs, written a law review article, published op-eds, spoken publicly on legal issues, and provided testimony to Congress.

In 2017 and 2018, based on public accounts, it appeared to me that the Special Counsel might be considering subpoenaing the President to explore his motives for terminating the FBI director on the theory that the removal may have constituted obstruction under 18 U.S.C. § 1512(c). I was concerned that predicating obstruction under this statute based solely on the removal of an FBI director would stretch the provision beyond its text and intent, and doing so could have implications well beyond the Special Counsel’s investigation. As my thoughts took shape during informal discussions with other lawyers, I eventually decided to reduce my thinking on this issue to writing in a memorandum. I wrote as a private citizen. I was not representing anyone. No one requested that I write the memorandum. I drafted it myself without assistance and based on public information.

As the media has reported, and as I have explained to a number of your colleagues, I provided the memorandum to and had discussions about the issue with lawyers on all sides of the

Special Counsel's investigation, including officials at the Department of Justice and the White House, as well as lawyers for the President. Over time, I also provided the memorandum to several lawyer friends and had discussions about the issue with them and many others.

Thank you for the opportunity to address these issues. I look forward to discussing them further with you and your colleagues at my upcoming hearing.

Sincerely,



William P. Barr

**Confirmation Hearing for William P. Barr to be Attorney General
of the United States Before the Senate Committee on the Judiciary
(November 12 and 13, 1991)**

**Colloquy with Senator Edward Kennedy located on pages 29-34 of
the transcript**

**CONFIRMATION HEARINGS ON FEDERAL
APPOINTMENTS—WILLIAM P. BARR**

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

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ON

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entitled to make that purchase is because of a criminal record or history of mental illness or other disqualifying factor.

Now, the Brady waiting period the administration is willing to accept as part of the crime package applies only to handguns. Assault weapons, obviously, are at least as lethal, and why shouldn't we expand the scope of the Brady bill to encompass assault weapons, as well?

Mr. BARR. On the assault weapon front, the proposal before us is the DeConcini amendment. I think—I don't know if this is a new statement or not, but I would support both the Brady bill waiting period and the DeConcini amendment, provided they were parts of a broader and more comprehensive crime bill that included tough enforcement provisions, including very tough provisions on the use of firearms in crimes and illegal purchase and trading in firearms, which are part of the package that passed the Senate.

Now, to be candid, on the waiting period, I would prefer an approach that was directed toward point of sale, and I know that we are not at that point yet technologically. It is going to require more investment, and I have been involved in infusing those resources to upgrade the records. But the important thing, I think, ultimately, will be a system that is based on State records, a State system. And so I think the House approach is preferable, frankly, to the Senate approach.

On the DeConcini amendment, I would prefer a limitation on the clip size, but ultimately I would recommend the President sign a bill that had the Brady waiting period and a DeConcini assault weapons provision in it, as long as we had other tough crime measures in it that dealt with the other problems.

I have not considered before whether the waiting period should apply to assault weapons and would want to think about that, but off the top of my head, I don't think there should be an objection to that.

Senator KENNEDY. Well, as you know, DeConcini on the assault weapons does not provide for the waiting period for the assault weapons. And although it includes a number—I believe it is 11 sets of assault weapons, there are clearly others that result in the same kind of destruction and havoc and threat to law enforcement personnel.

I think the fact that you are forthcoming in terms of the waiting period for assault weapons is very constructive. We have—

The CHAIRMAN. And unusual for an Attorney General nominee.

Senator KENNEDY. We have here just the application for the purchase of weapons, and as you are familiar, prior to 1968, they didn't even ask the six or seven questions, which are probably the most rudimentary questions that there are. Of course, without having the opportunity to give local law enforcement the opportunity to check those, the significance and importance of them are significantly compromised. And it has been to try and give that period of time to local law enforcement that the waiting period has been supported, and there have been some important successes. In New Jersey over a period of time some ten thousand convicted felons trying to buy guns have been identified. I am not going to take the time of the committee to go through those.

But the fact that you would be willing to consider seems to me to be logical. If it is important in terms of dealing with violence on the hand guns and on the kinds of weapons that have been used that have brought such destruction and violence to our fellow citizens, would certainly be justified as well, and that are threatening many of those in the law enforcement community.

Just let me ask you on one other related area, and that is on reviewing the licensing requirements for the sale of assault weapons, as you probably know, and I won't go through in great detail. But it is virtually four or five of the same kinds of questions, and you can get a license to sell these assault weapons and sell them to virtually anyone. And it seems to me that if it is good enough in terms of the purchase of the hand guns, in terms of checking out the background, and good enough in terms of trying to deal with the assault weapons, having some kind of idea about who is going to be selling these, who is going to be the licensee, given some of the recent information about who is selling assault weapons is worthwhile, as well.

Would you be at least willing to visit and talk about that particular issue and see what suggestions you might have on that?

Mr. BARR. Sure, Senator. I am always willing to consider that. In considering restrictions on the lawful sale of guns, I do start out with the threshold considerations that the most effective way ultimately of dealing with violent crime is to deal with violent criminals, and that anything that focuses exclusively on lawful sale is somewhat of a feckless exercise. But as part of a comprehensive approach, I think it is legitimate to take a look at reasonable steps, recognizing that there is a tradition of private gun ownership in this country and a legitimate interest in that, but nevertheless looking at reasonable steps as part of a broader approach to controlling the deadly use of firearms that is becoming an increasing part of the plague of violence, the crime that we have in our streets.

Senator KENNEDY. I liked your earlier answer better, but I am glad to hear this one, too. [Laughter.]

I would say to my good friend from South Carolina, if you need any recommendations on those vacancies up in Massachusetts, to fill those, I would be glad to help.

Let me go to another area, and that is the area that we talked about at the time that we had our visit, which I very much appreciated. That is with regard to the Wichita Operation Rescue case and the decision to file a brief in the Wichita Operation Rescue case, the *Women's Health Care Services v. Operation Rescue*. As we understand, historically the Federal Government has protected the individual rights, and when protesters attempted to prevent the black Americans from attending newly integrated schools by blocking the students' access, the Federal Government stepped in to ensure the students' safe entry. That was done at a time when there were many that really, out of a sincere belief, believed that the law was wrong during that time. It wasn't really a question whether they believed it was right or wrong. Still, the Justice Department acted.

But in this case, the U.S. Justice Department reached out to the district court in Kansas and entered the dispute on the side of the

lawbreakers. It weighed in with those who would forcibly deny a woman a Federal constitutional right to abortion. And it, as far as I am concerned, poured gasoline on an already volatile situation by making it appear that the Government supported the clearly unlawful acts of Operation Rescue.

The Government had already stated its position in a brief before the Supreme Court, defended in both cases the same entity, Operation Rescue, was even represented by the same attorney so there is no reason to believe the judge in Kansas would not be apprised of the pending Supreme Court case.

Why did the Government feel it necessary to sort of fan the flames in Wichita and to argue that Operation Rescue should be free from the Court's order prohibiting its illegal activities?

Mr. BARR. Well, thank you, Senator. This gives me the opportunity to describe what happened because I think it has been mischaracterized, largely, and people drew the wrong conclusions from the way it was publicly presented.

In describing it, I would like to emphasize three points. First, this was not viewed as an abortion issue in the Department. It was viewed as an issue of jurisdiction and the reach of the so-called Ku Klux Klan Act of 1871.

Second is that the Department did not side with the demonstrators. On the contrary, we condemn those who break the law and who violate other people's legal rights.

Third, this was not a gratuitous action by the Department where we reached out and tried to stir up an issue. On the contrary, we felt that circumstances came about that really drew us into it, and we tried in good faith to deal with it in a lawful way as we understood it.

The first point that I think bears emphasis is that Operation Rescue demonstrators who block abortion clinics are lawbreakers. They are treading on other people's legal rights. I do not support or endorse or sympathize with those tactics. As the President said, everybody has an obligation to obey the law, and as a Government official, my responsibility is to enforce the law and to protect people's rights.

The issue in Wichita was not whether those demonstrators should be dealt with. The issue in Wichita was which statute should be used to deal with them, which law enforcement agency should be used, and what court system should be used to deal with the demonstrators. And we believe that the applicable statutes were local and that the local police should be the law enforcement agency and that the local courts could deal with it. And this has been—in fact, in city after city around the country, that is how it has been handled—locally.

In Wichita, there was an attempt to federalize the issue. The clinics went to Federal court claiming that there was a violation of the Ku Klux Klan Act and seeking the intervention of Federal marshals to enforce their rights of access. Now, before Wichita, I learned at the time—I hadn't really focused on it before until the Wichita matter came up to me—but before Wichita, as you mentioned, this same effort had been made to federalize this issue, and that was in the Washington, DC, area. And that had been litigated up to the Supreme Court, and 3 to 4 months before Wichita, the

Department had filed a brief in the *Bray* case in the Supreme Court, saying that the Ku Klux Klan Act did not give Federal jurisdiction in these kinds of matters, that it required a class-based animus, certainly racial and possibly sexual class-based animus. But that was the limit of the jurisdiction under the Ku Klux Klan Act. So that was a position we had already taken by the time Wichita arose.

We had the additional situation where the district court judge in Wichita bought into the Ku Klux Klan Act theory. He issued a very broad injunction, sweeping injunction that had very stiff—as a condition of demonstrating, imposed a—I have forgotten what the term is now. But, anyway, the demonstrators had to pay in substantial moneys as a condition of demonstrating.

That concerned us, and then the order itself, the injunction itself, had very detailed instructions to the marshals about how to enforce the order.

The judge started holding press conferences and made statements—at least they were reported to me—about filling the jails, statements hostile to the elected officials, and also indicating that the Department of Justice fully supported his position. A number of components expressed concern about this state of affairs, and we had wide consultations within the Department, and it was decided that the best way to proceed, since we had already taken the position that the marshals did not have the jurisdiction to go in and do the things that they were now being told to do by the district court judge, was have the marshals obey the judge, have them obey the law, and call on everyone to obey the law, and then file an amicus with the court where we submitted the *Bray* brief—not rearguing the matter, just giving the judge a copy of the *Bray* brief to make it clear what our legal position was, but at the same time telling everyone to follow the judge's order.

I think for a period of time it helped defuse the situation out there and focus the attention on the courts and the legal process where it should be, rather than on the streets. But several days after that action, it appeared to me that other elements in Operation Rescue rekindled it and violated the law. They were arrested by—most of the arrests were by local police, but the marshals also made arrests. And I believe a number of them are being prosecuted for interfering with U.S. marshals.

But it was a legal question about the jurisdiction of the Ku Klux Klan Act, as I said, and we felt it was the proper thing to do, given the earlier position we had taken.

Senator KENNEDY. I am wondering if I could just finish. This is a very helpful statement and a good one.

The CHAIRMAN. Sure.

Senator KENNEDY. Just a final couple of points on this, if I could inquire, Mr. Chairman.

Do I understand you are saying that you think the Federal courts should not have jurisdiction to prevent interference with a woman exercising her constitutional right to choose abortion?

Mr. BARR. I was saying that the Ku Klux Klan Act doesn't provide that jurisdiction. I wasn't taking a policy position.

Senator KENNEDY. Well, you are aware that three Federal Courts of Appeals have decided this issue—the Second, Third, and Fourth

Circuits—as well as at least 12 Federal District Courts have held that section 1985-3 can be used to prevent groups like Operation Rescue from blockading clinics. The rulings have been based on interference with the right to travel. Only three District Courts, no Courts of Appeals, have taken views espoused by the Justice Department, which would deny women seeking abortions protection from these law-breakers.

I mean, effectively you are saying on the one hand they have a constitutional right, but you are leaving it up to the local law enforcement. And even in this case, you advocated that they lift the injunction against those that had been interfering with the clinic, and even in the face of the attorney that said, even if they don't lift it, I am not going to urge that they not continue their interference and their activities. And we are trying to find out what really the distinction is between the Justice Department that was prepared to go the extra mile on the basis of race over a period of 30 years to guarantee a constitutional right, and not prepared, evidently, to give the assurance of the protection and the safety to an individual here that is trying to pursue a constitutional right.

Mr. BARR. I think the issue for us as a matter of law was whether the Ku Klux Klan Act of 1871 was intended to provide that basis. I was not taking a position on whether the Government should or should not do that. Let me give you an example, and I do not mean to equate the two or analogize here, but I went to Columbia University during the riots in the late 1960's. People interfered, private citizens interfered with my constitutional rights, and I am not saying this is an analogous situation completely, but people blocked me from getting into the library, I know how it feels to be blocked when you are going about your lawful rights and it is quite offensive.

But even though I was being blocked in the exercise of my constitutional rights, I was being blocked not by the State, but by private people. And my remedy there was to go to State courts and get the city police to get them out of my way, which is what ultimately happened.

Now, with the Ku Klux Klan Act, the Federal Government has been given a role to play in certain circumstances where private parties combine to interfere with constitutional rights, but that is an exception to the rule. And the issue was whether that statute, passed in 1871, was designed to give the Federal Government that kind of a role in the matter of abortion and when this issue came to me the Department had already taken an issue on the position.

Senator KENNEDY. Well, I would just cease and hope you give responses.

I understand the 1985 Act prohibits a conspiracy to deprive a person, a class of persons from equal protection or equal privileges. Operation Rescue blockades are aimed at preventing pregnant women from obtaining abortions. Now, Congress said in the Pregnancy Discrimination Act, and that passed 75-to-11, that discrimination based on pregnancy is a sex discrimination under title VII.

So the Justice Department action in Wichita abandoned its traditional role of advocating the protection of civil rights under title VII. If we said that it is under title VII, with the Pregnancy Discrimination Act, falls within that, it would appear to me that there

are those kinds of requirements for the protection of individuals. I do not know whether you have any kind of comment, my time is gone.

Mr. BARR. I would want to have, you know, I would want to see that issue briefed before reaching a conclusion, but off the top of my head, my feeling there is if the class that is being invidiously discriminated against are pregnant women then title VII might apply, but that is not what was happening here. These people were not invidiously discriminating or demonstrating against all pregnant women. They were against abortion, both the patients and the people performing the abortion, that was the activity they were demonstrating against.

But I would want to have that issue fully briefed before I reached any conclusions on it.

Senator KENNEDY. Thank you, Mr. Chairman.

The CHAIRMAN. Let me ask the nominee as well as the committee a scheduling issue here. This was noticed for continuing tomorrow as well. I have no intention of ending now. We are going to go for a while longer, but it is my inclination, but I would be interested in my colleagues input that we finish today about 5:30. And that would get us so that we have at least two more of our colleagues, excuse me, three to four more of our colleagues be able to ask questions and then begin tomorrow at 10 o'clock.

Things are going fairly smoothly, I think we can just keep going along at that pace, if that is all right with the committee. Is that appropriate?

Well, then why do we not give you a chance to stretch your legs, a five-minute break right now, and then we will continue.

[Recess.]

The CHAIRMAN. The hearing will come to order.

Senator GRASSLEY. And before you begin, Senator, I am told that there is going to be a vote around 5:15 and so hopefully we can get three or four more of our colleagues in before we break for that vote, if that is possible.

I have not been following, but what has been our time allotment? I forget.

The CHAIRMAN. Technically it has been 15 minutes, and in almost every case it has gone longer.

Senator GRASSLEY. OK, well, I probably will not use more than 15 minutes.

Mr. Barr, as you probably remember and I am sure that we have talked privately at other times when you have been around my office, of my interest in the False Claims Act of 1986. I was involved with the writing of that act, and as everybody knows that act was passed to give incentives for individuals who know about fraudulent use of taxpayer's money, the ability to take cases to the court and get a judgment or get a portion of what the Treasury would find in a favorable judgment.

For the False Claims Act to work it is very important that the Justice Department not fight efforts by private qui tam relators to pursue claims on behalf of the Treasury. Sometimes I have had cause for concern whether or not there has been a real commitment on the part of DOJ to prosecute in qui tam suits.