

Nomination of William Barr to be Attorney General of the United States
Questions for the Record
Submitted January 23, 2019

QUESTIONS FROM SENATOR LEAHY FOR MARC MORIAL

1. During his first stint as Attorney General under President George H.W. Bush, Mr. Barr was adamant that “increasing prison capacity is the single most effective strategy for controlling crime.”
 - a. **In your view, is increasing prison capacity really the most effective strategy to control crime? If not, what in your opinion are the most effective strategies?**

Response:

Increasing prison capacity is absolutely not the most effective strategy to control crime! The most effective strategies are holistic in nature, i.e., the use of sensible and smart law enforcement such as effective community policy practices; prevention programs such as early childhood education and workforce training and employment placement; mental health programs; health programs to prevent and treat drug addiction; as well as a range of supportive services targeted to vulnerable individuals and families.

2. Mr. Barr also stated that he thought our justice system was “fair and didn’t treat people differently.”
 - a. **Based upon your own experience, does our justice system really treat every person the same regardless of the race or background of the individual?**

Response:

The years of debate on how to reform our criminal justice system has led to abundant studies documenting the racially discriminatory impact of our justice system on people of color – particularly African Americans.ⁱ According to a recent brief by the Vera Institute of Justice, Black men comprise about 13 percent of the male population, but about 35 percent of those incarcerated. One in three Black men born today can expect to be incarcerated in his lifetime, compared to one in six Latino men and one in 17 white men. Black women are similarly impacted: one in 18 Black women born in 2001 is likely to be incarcerated sometime in her life, compared to one in 111 white women. The brief outlines the systemic challenges faced by African Americans where “bias by decision makers at all stages of the justice process disadvantages black people. Studies have found that they are more likely to be stopped by the police, detained pretrial, charged with more serious crimes, and sentenced more harshly than white people.”ⁱⁱⁱ

According to Senator Cory Booker, in Mr. Barr’s written response to the Senator’s question pertaining to implicit bias in criminal justice where Senator Booker asked if Mr.

Barr would continue the Department of Justice policy of implicit bias training, Mr. Barr responded that he had not studied implicit bias and was unaware of this issue.

3. Mr. Barr stated before this Committee that while he once supported strong penalties on drug offenders, he now understands that things have changed since 1992.
 - a. **Are you concerned about Mr. Barr's historic approach to drug crimes, and how he would handle such issues as Attorney General?**

Response:

Mr. Barr's record reveals that he appears to hold a dated 1980s and 1990s view on how to approach drug crimes. During his testimony at his confirmation hearing, Mr. Barr presented himself as having matured in his views since then. However, in light of his whole-hearted support for former Attorney General Jeff Sessions in his recent op-edⁱⁱⁱ we are left confident that his approach has not changed.

- b. **What in your opinion is the best way to lower crime rates associated with drug use?**

Response:

The best strategy is multifaceted. First and foremost, it requires that we treat drug use as a public health issue if we are to stymie the demand for drugs. It also requires that we ferret out the trafficking of drugs and its distribution, and that law enforcement be community invested and focus on violence and serious offenses, as opposed to focusing on minor violations.

4. As indicated in Mr. Barr's exchange with Senator Blumenthal, Mr. Barr stated that he believed it was the right thing under the law to segregate people with HIV who were seeking asylum in Guantanamo Bay.
 - a. **Was Mr. Barr correct when he said this policy was right under the law?**

Response:

My response to this issue is based on research and adherence to justice on behalf of the Haitian immigrants who were cruelly harmed by this policy, since I have not had professional involvement on this issue at the time that it occurred. Research informs that this policy was ruled to be a gross violation of the U.S. Constitution by a federal judge who deemed the Guantanamo Bay detention center an "HIV prison camp."^{iv}

Do you believe Mr. Barr handled that situation appropriately?

Response:

Absolutely not. His decision was political, racist, cruel and inhumane. While the Guantanamo Bay base was under American control, it was not technically part of the United States and left asylum seekers in a legal gray area where detainees were essentially stripped of the “right to have rights.”^v His views on HIV/AIDS were not governed by experts in the health professions who argued that AIDS was not a highly infectious disease such as tuberculosis because it cannot be contracted through the air or casual contact.^{vi} Research shows that William Barr admitted to politics – not the law – playing a role in the detention of HIV-positive asylum seekers.^{vii}

According to Lucas Guttentag, the founding national director of the Immigrants' Rights Project of the American Civil Liberties Union and co-counsel in fighting for the refugees' freedom, “Detention at Guantanamo was a calculated effort to deny any constitutional or legal rights to bona fide refugees and targeted and stigmatized Haitians because of their illness. The conditions were deplorable, and the callous lack of sensitivity to human suffering and fundamental human rights was shocking.”^{viii} According to The Daily Beast, “Navy doctors, stymied by the lack of resources necessary to treat hundreds of HIV-positive refugees, requested the medical evacuation of several detainees from Guantanamo, which the Justice Department almost universally denied.”

We do not need an Attorney General such as Mr. Barr who continues to hold these views at the helm of the Justice Department.

^vSee: Federal Bureau of Prisons, “Offenses,” Last Updated January 27, 2018. Accessed at https://www.bop.gov/about/statistics/statistics_inmate_race.jsp; United States Sentencing Commission, “An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System,” July 2017, p.36. Accessed at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf; The Sentencing Project, “Shadow Report to the United Nations on Racial Disparities in the United States Criminal Justice System,” August 31, 2013, Accessed at <https://www.sentencingproject.org/publications/shadow-report-to-the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/>; Top Trends in State Criminal Justice Reform, 2017, Accessed at <https://www.sentencingproject.org/publications/top-trends-state-criminal-justice-reform-2017/>; “Racial Impact Statements, Changing Policies To Address Disparities,” by Marc Mauer, Accessed at <https://www.sentencingproject.org/wp-content/uploads/2016/01/ABA-Racial-Impact-Statements.pdf>; and *Transforming Prisons, Restoring Lives Final Recommendations of the Charles Colson Task Force on Federal Corrections*, January 2016, p. 25, Accessed at <https://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf>

^{vi}*An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, By Elizabeth Hinton, Assistant Professor, Department of History and Department of African and African American Studies, Harvard University, LeShae Henderson, Special Assistant, Research, Vera Institute of Justice, and Cindy Reed, Senior Editor, Vera Institute of Justice, Accessed at https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-unjust-burden/legacy_downloads/for-the-record-unjust-burden-racial-disparities.pdf

^{vii}We are former attorneys general. We salute Jeff Sessions,” by William P. Barr, Edwin Meese III, and Michael B. Mukasey, November 7, 2018, See, https://www.washingtonpost.com/opinions/jeff-sessions-can-look-back-on-a-job-well-done/2018/11/07/527e5830-e2cf-11e8-8f5f-a55347f48762_story.html?utm_term=.6996b10fe367

^{iv}“William Barr, Trump’s Attorney General Nominee, Held Immigrants in ‘HIV Prison Camp,’ ” by Scott Bixby, The Daily Beast, January 15, 2019, *Accessed at* <https://www.thedailybeast.com/trumps-attorney-general-nominee-held-immigrants-in-hiv-prison-camp>

^vIbid.

^{vi}http://articles.latimes.com/1993-02-05/news/mn-1021_1_white-house

^{vii}“William Barr, Trump’s Attorney General Nominee, Held Immigrants in ‘HIV Prison Camp,’ ” by Scott Bixby, The Daily Beast, January 15, 2019, *Accessed at* <https://www.thedailybeast.com/trumps-attorney-general-nominee-held-immigrants-in-hiv-prison-camp>

^{viii}Ibid.

**Questions for the Record for Marc H. Morial
From Senator Mazie K. Hirono**

In your opening statement, you criticized former Attorney General Jeff Sessions’s review of the Justice Department’s use of consent decrees to address police misconduct, calling it “a subterfuge to undermine a crucial tool in the Justice Department’s efforts to ensure constitutional and accountable policing.” I specifically asked Mr. Barr about this topic during his confirmation hearing. I asked him whether he agreed with former Attorney General Sessions’s memo in which he made it harder for the Justice Department’s Civil Rights Division to enter into consent decrees to address systemic police misconduct. He responded that he “agree[d] with that policy.”

Please describe the importance of consent decrees in addressing police abuse and the impact continuing former Attorney General Sessions’s policy would have on civil rights enforcement more generally.

Response:

With regards to ensuring constitutional and accountable policing, consent decrees serve as voluntary agreements that include city leaders, the police department, and the Department of Justice to secure reforms of unconstitutional policing practices. The use of consent decrees occurs only after an exhaustive investigation of the police department by the Department of Justice, and with the agreement of the City and its police department.

Consent decrees are not meant to be punitive and arise only after documented pattern and practice of violations of citizens’ constitutional rights. It is the responsibility of the Attorney General to enforce provisions of law requiring the investigation of complaints made by citizens and in high profile incidents, such as occurred with the police shootings of unarmed citizens who are disproportionately Black and brown individuals.

Former Attorney General Jeff Sessions did not fulfill his responsibility to enforce the law by his opposition to consent decrees and sought to re-write federal law by executive fiat. Where progress has been made, Sessions’ actions place communities of color at risk of regression from such progress. Where reform of police use of force is warranted, Sessions’ abandonment of the use of consent decrees places citizens in vulnerable communities at serious risk of continued abuse, further unconstitutional policing practices, and deadly unarmed shootings.

According to a recent briefing report by the U.S. Commission on Civil Rights (USCCR)ⁱ on police use of force:

There have been several police departments that have experienced positive changes through consent decrees with the Justice Department. Former Obama Department of Justice Acting Assistant Attorney General (AAG) Vanita Gupta cites East Haven, Connecticut, Los Angeles, California, and Seattle, Washington as having successful transformations. She states that these transformations are “more than just [an] enactment of specific reforms. It really is a fundamental change in how the community relates to the police department and vice versa.”ⁱⁱ

The USCCR report cites the impact that a consent decree is having in the New Orleans Police Department:

The Deputy federal monitor for the New Orleans Police Department consent decree, David L. Douglass argues that while “Consent decrees are costly, ad hoc, and necessarily limited responses to a historically rooted and widespread problem, one that has become more prominent, divisive, and volatile . . .” taken collectively they “constitute a compendium of best practices for constitutional, effective, community-oriented policing.” He further posits that these agreements can empower communities and strengthen community-police relationships by enforcing the elements of constitutional and effective policing and providing a foundation for reform.ⁱⁱⁱ

William Barr’s testimony in response to your question to him during his confirmation hearing that he agrees with former Attorney General Sessions’ policy on consent decrees would be devastating to especially Black and brown communities and would represent a total abandonment of the efforts under the previous Administration to address systemic reforms pertaining to police misconduct.

ⁱPOLICE USE OF FORCE: AN EXAMINATION OF MODERN POLICING PRACTICES, BRIEFING Report, United States Commission on Civil Rights, November 2018, See <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>

ⁱⁱIbid. p. 92. For additional, comprehensive discussion on police reform and consent decrees, See also, <http://politics.uchicago.edu/news/entry/a-look-at-the-doj-ferguson-probe-with-vanita-gupta>

ⁱⁱⁱIbid. p. 90.