

**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.”<sup>6</sup> 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.<sup>7</sup> She had determined the order was unlawful, and so she refused to direct the Justice Department to defend it.<sup>8</sup> 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.”<sup>9</sup>

- 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

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<sup>6</sup> *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>.

<sup>7</sup> 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](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).

<sup>8</sup> 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>.

<sup>9</sup> 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.”<sup>10</sup>
  - a. Do those statements accurately reflect your interpretation of the relevant Special Counsel regulations,<sup>11</sup> 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

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<sup>10</sup> *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>.

<sup>11</sup> 28 C.F.R. § 600.8-9.

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

**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.<sup>13</sup> 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

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<sup>12</sup> *Id.* § 600.9(c).

<sup>13</sup> 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.”<sup>14</sup> 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.”<sup>15</sup>

- 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”?<sup>16</sup>
- 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

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<sup>14</sup> 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>.

<sup>15</sup> 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>.

<sup>16</sup> *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.”<sup>17</sup>

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.<sup>18</sup> 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.”<sup>19</sup>

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.

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<sup>17</sup> 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](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).

<sup>18</sup> 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>.

<sup>19</sup> 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.<sup>20</sup>
  - 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.’”<sup>21</sup>
  - a. If President Trump told you that he was considering pardoning members of his

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<sup>20</sup> 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>.

<sup>21</sup> *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.”<sup>22</sup> 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

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<sup>22</sup> *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.<sup>23</sup>

- 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.<sup>24</sup> The reversal came after almost six years of arguing that the Texas voter ID law intentionally discriminated against minorities.<sup>25</sup> 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.<sup>26</sup>
  - 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*,<sup>27</sup> states across the country

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<sup>23</sup> *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>.

<sup>24</sup> 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>.

<sup>25</sup> *Id.*

<sup>26</sup> See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

<sup>27</sup> 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.<sup>28</sup> One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.<sup>29</sup> 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.<sup>30</sup>
  - a. Do you agree that voter ID laws disproportionately disenfranchise people of color and people of lesser means?

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<sup>28</sup> 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>.

<sup>29</sup> 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>.

<sup>30</sup> 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](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.<sup>31</sup> 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.<sup>32</sup> 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.”<sup>33</sup>
- 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**

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<sup>31</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>32</sup> 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](https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874f1ac36_story.html).

<sup>33</sup> *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.<sup>34</sup> 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.”<sup>35</sup>

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.”<sup>36</sup> 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.”<sup>37</sup>

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<sup>34</sup> 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>.

<sup>35</sup> *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>.

<sup>36</sup> 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>.

<sup>37</sup> 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.<sup>38</sup> 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.**

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<sup>38</sup> *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.”<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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

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<sup>39</sup> 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>.

<sup>40</sup> FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST-CENTURY POLICING (May 2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>41</sup> 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.”<sup>42</sup> Some community activists and others who had undergone questioning said the FBI interviews felt like “intimidation”<sup>43</sup> or “harassment.”<sup>44</sup>

- 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.<sup>45</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>46</sup> These shocking statistics are reflected in our nation’s prisons and jails.<sup>47</sup> 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.<sup>48</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

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<sup>42</sup> 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>.

<sup>43</sup> *Id.*

<sup>44</sup> 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>.

<sup>45</sup> 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>.

<sup>46</sup> *Id.*

<sup>47</sup> 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>.

<sup>48</sup> *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.<sup>49</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>50</sup>
- 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.**

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<sup>49</sup> 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>.

<sup>50</sup> *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.”<sup>51</sup> 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.”<sup>52</sup> 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.”<sup>53</sup>

At the time you made those comments in 1992, there were more than 1.1 million border apprehensions the previous fiscal year.<sup>54</sup> In Fiscal Year 2017, there were around 304,000.<sup>55</sup> 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.<sup>56</sup> Now, \$3.8 billion is appropriated to U.S. Border Patrol to secure our borders.<sup>57</sup>

- 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”?

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<sup>51</sup> Eric Tucker, *Trump’s Pick for AG Once Questioned Value of Border Wall*, ASSOCIATED PRESS (Dec. 31, 2018), <https://www.apnews.com/01712e03bb324664b870cc74cc2f9c8d>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> 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).

<sup>55</sup> *Id.*

<sup>56</sup> *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](https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf).

<sup>57</sup> *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.”<sup>58</sup> 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 King<sup>59</sup> 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.”<sup>60</sup>

- 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.<sup>61</sup> The research also found that undocumented immigrants were half as likely to be incarcerated as native-born Americans.<sup>62</sup> 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.**

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<sup>58</sup> *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>.

<sup>59</sup> 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](http://articles.latimes.com/1992-06-21/opinion/op-1236_1_attorney-general/2).

<sup>60</sup> *Id.*

<sup>61</sup> Alex Nowrasteh, *Immigration and Crime—What the Research Says*, CATO INST. (July 14, 2015), <https://www.cato.org/blog/immigration-crime-what-research-says>.

<sup>62</sup> *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.”<sup>63</sup> 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.<sup>64</sup> This policy resulted in thousands of immigrant children being cruelly separated from their parents.<sup>65</sup>

- 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.<sup>66</sup> 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.”<sup>67</sup> 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.”<sup>68</sup>

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<sup>63</sup> 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>.

<sup>64</sup> 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>.

<sup>65</sup> 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>.

<sup>66</sup> 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>.

<sup>67</sup> *Id.*

<sup>68</sup> *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.<sup>69</sup> 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.<sup>70</sup> He used her case to disqualify entire categories of claims that were legitimate grounds for asylum.<sup>71</sup>
- 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

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<sup>69</sup> 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>.

<sup>70</sup> *Id.*

<sup>71</sup> *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."<sup>72</sup> 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

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<sup>72</sup> *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.<sup>73</sup>

- 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**

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<sup>73</sup> 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.<sup>74</sup> 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.**

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<sup>74</sup> 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>