

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.