

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

**QUESTIONS FROM SENATOR FEINSTEIN**

1. In your written testimony, you said that your “goal will be to provide as much transparency as I can consistent with the law” with respect to any report produced by Special Counsel Mueller. You also said that “where judgments are to be made by me,” you would make those judgments based solely on the law. As you may be aware, recent reports suggested that President Trump’s legal team is “gearing up” to “strongly assert the president’s executive privilege” in an effort to prevent information in the report from becoming public. (Carol D. Leonnig, *A beefed-up White House legal team prepares aggressive defense of Trump’s executive privilege as investigations loom large*, WASH. POST (Jan. 9, 2019))
  - a. Have you discussed with anyone the use of executive privilege in connection with Special Counsel Mueller’s report? If so, with whom, when, and what was discussed?
  - b. If confirmed, what standards would you apply and what process would you follow in evaluating any claims of executive privilege asserted by the President?
  - c. How will you ensure your desire to grant the public and Congress “as much transparency” as possible is not impeded by the White House’s interest in preventing full disclosure of the report?

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

2. Despite your pledge at your hearing “to provide as much transparency as [you] can,” you

also indicated that you might not provide the report that Special Counsel Mueller will prepare at the conclusion of his investigation pursuant to the Justice Department's Special Counsel regulations. Rather, you committed only to providing your own "report based on that report." Will you commit, if confirmed, to provide to Congress the full report that Special Counsel Mueller prepares at the end of his investigation?

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

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

3. In June 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Steve Engel, the head of the Department of Justice Office of Legal Counsel, and to President Trump's personal attorneys criticizing Special Counsel Robert Mueller's investigation. (Memo from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel re: Mueller's "Obstruction" Theory (June 8, 2018)) Please provide a complete list of everyone to whom you gave the memo, when it was provided, whether there was any communication about the memo before or after it was delivered, and why you provided it.

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

4. You testified that “It is very common for me and for other former senior officials to weigh in on matters that they think may be ill advised and may have ramifications down the road.” Please provide a list of all other topics under the Justice Department’s jurisdiction where you submitted a legal memo to the Department or the White House, the dates the memos were provided, and whom they were submitted to.

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

5. I wrote to you about the June 2018 Mueller memo in December, but I’d like you to clarify your answers for the record.
  - a. You testified no one asked you to write the memo. Why did you decide to do so?
  - b. At the time you submitted this memo to officials at the Justice Department and President Trump’s attorneys, had you talked to anyone about a possible Attorney General nomination? If so, with whom, when, and what was discussed?
  - c. Did you consult anyone during the process of drafting this memo? If so, whom?
  - d. Did you discuss this memorandum or its contents with Mr. Rosenstein, Mr. Engel, or anyone at the Department of Justice before or after you submitted it? If so, with whom, when, and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?
  - e. Did you discuss this memorandum or its contents with anyone else? If so, with whom and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?

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

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

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

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

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

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

6. During your hearing, you reserved the right not to follow advice from career Department ethics officials.
  - a. If you are confirmed, will you commit to providing to the Committee any advice career Department ethics officials give you about recusal related to this memo or

any other matter related to the Special Counsel's investigation?

- b. If you disregard or disagree with advice from career ethics officials, will you also commit to providing an explanation of the basis for your disagreement and how you plan to address any concerns raised?

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

7. What steps will you take if you are confronted with a legal question or matter where the outcome might implicate the President's business or other financial interests?

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

8. Longstanding Justice Department policies limit communications between the Justice Department and the White House about pending or contemplated investigations to a select few officials. (Memorandum from the Attorney General for Heads of Department Components, All United States Attorneys re: Communications with the White House and Congress (May 11, 2009)) This policy helps insulate Justice Department decisionmaking from political influence and protects potentially sensitive law enforcement information. At his nomination hearing, Deputy Attorney General Rosenstein confirmed that this policy was still in place and committed to enforcing it. (S. Hrg. *Confirmation Hearing on the Nomination of Rod Rosenstein to be Deputy Attorney General* (Mar. 7, 2017))

When you were asked at your hearing what the current Justice Department communications policy is, you said, "Well, it depends -- it depends what it is, but on criminal matters I would just have the AG and the deputy."

- a. Are you familiar with the longstanding Justice Department policy memorialized in a May 2009 letter from Attorney General Holder? If you are confirmed, do you commit to enforcing this policy and ensuring that both the Justice Department and the White House know the rules?
- b. You also stated in the hearing, you thought you would strengthen the policy. What did you mean by that?

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

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

9. The Justice Department and FBI consistently decline to comment publicly or to Congress about open investigations. The Inspector General calls this the “stay silent” rule and says that rule, among other things, protects “the integrity of an ongoing investigation” and “the Department’s ability to effectively administer justice without political or other undue outside influences.” (Department of Justice, Office of the Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018) at p. 371) For similar reasons, nearly two decades ago, the Justice Department informed Congress in a letter to Rep. John Linder that “[t]he Department’s longstanding policy is to decline to provide Congressional committees with access to open law enforcement files.” (Linder Letter, 1/27/00)
- a. Are you familiar with this longstanding Justice Department policy against public disclosure of information about open investigations?
  - b. If you are confirmed, do you commit to enforcing this policy against public disclosure of information about open investigations?
  - c. Is the disclosure of information about a confidential source consistent with this policy?
  - d. Is providing FISA applications relevant to an ongoing investigation consistent with this policy?

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

10. You have repeatedly endorsed an expansive view of presidential power, referred to as the “unitary executive theory.” (William P. Barr, Assistant Attorney General, Office of Legal Counsel, *Common Legislative Encroachments On Executive Branch Authority*, (July 27, 1989)) Under this theory, the President would have virtually limitless control over the Executive Branch, and very few, if any, checks on his constitutional authorities.

At your hearing, you promised to allow Special Counsel Mueller’s investigation to continue unimpeded if you are confirmed as Attorney General and committed to complying with the Justice Department’s Special Counsel regulations. Under the unitary executive theory, would the President have the power to direct the Attorney General's to rewrite the regulations?

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

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

11. The Supreme Court rejected the unitary executive theory in *Morrison v. Olson*, 487 U.S. 654 (1988).
  - a. Do you believe *Morrison v. Olson* was correctly decided?

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

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

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

- c. During your hearing you said, “the President can fire a U.S. Attorney. They are a presidential appointment.” Was it acceptable for the President to dismiss seven U.S. Attorneys for prosecuting Republican elected officials or not prosecuting Democratic elected officials in 2006?

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

12. You have said that, as Attorney General, you advised President George H.W. Bush that you “favored the broadest” pardon for Caspar Weinberger and several other individuals implicated in the Iran-Contra Affair. (Miller Center Interview, 4/5/01) Then- Independent Counsel Lawrence Walsh said the decision to issue these pardons “undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office—deliberately abusing the public trust without consequence.” (David Johnston, *Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-Up'*, N.Y. TIMES (Dec. 25, 1992))

- a. Do you believe the President’s pardon authority is subject to any limits? What would constitute an abuse of presidential pardon authority?
- b. Could a President under criminal investigation pardon his co-conspirators?
- c. Could a President offer a pardon in exchange for a witness’s agreement not to cooperate with investigators?
- d. Could the President grant pardons in exchange for bribes?

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

13. In your view, what are the options for holding a president accountable for abuse of the



pardon authority? During your hearing, you were asked if the President has authority to use money appropriated to the Defense Department to build a wall on the border. You responded, “without looking at the statute, I really could not answer that.”

- a. Now that you have had the opportunity to review any relevant statutes, please state whether you believe the President can use money currently appropriated to the Defense Department to build a border wall.
- b. Putting aside the statute, do you believe the President has inherent authority under the Constitution to use appropriated funds regardless of what Congress dedicated the funds for?

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

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

14. In 2005, the George W. Bush Administration issued a signing statement reserving the President’s right to decline to enforce the Detainee Treatment Act’s ban on torture. The statement argued the ban could infringe on the President’s Commander in Chief authority. (Bush Signing Statement (Dec. 30, 2005))
  - a. Do you agree with this signing statement?
  - b. Do you believe it was lawful?

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

15. Have you reviewed the Executive Summary of the Senate Select Committee on Intelligence’s Study into the CIA’s Detention and Interrogation Program? If confirmed, will you commit to reviewing the full, classified study before you work on any matter regarding detainee treatment or interpretation of the Convention Against Torture or Geneva Conventions?

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

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

16. During your hearing, you told Senator Grassley that, if confirmed, you will ensure that the Justice Department will respond in a timely manner to requests from both Committee Chairs and Members of Congress.

- a. Will you specifically commit to timely responding to minority requests—not just requests from a Chair or members of the majority?

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

- b. When Congress requests information from the Executive Branch, how and in what circumstances is executive privilege properly invoked? What standards and process will you use to evaluate the legitimacy of presidential executive privilege claims?

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

17. On January 16, 2019, the U.S. General Services Administration (GSA) Office of Inspector General released a report regarding the Old Post Office Building that GSA leases to President Trump and a corporation he wholly owns. The report concluded that GSA attorneys acted improperly when they “agreed [that the lease presented] a possible violation of the Foreign Emoluments Clause but decided not to address the issue.” This conclusion was based, in part, on the GSA attorneys’ “fail[ure] to seek OLC’s guidance, even though [they] knew that OLC issued opinions on the Foreign and Presidential Emoluments Clauses.” (GSA OIG Report at p. 16) During your hearing, you repeatedly discussed the importance of seeking the Office of Legal Counsel’s guidance when faced with complex constitutional questions.

- a. The Justice Department has also been confronted with issues related to President Trump's financial holdings and the Emoluments Clauses. If confirmed, do you commit to seeking guidance from OLC on the applicability of the Emoluments Clauses to President Trump's personal financial interests?

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

- b. Do you commit to make public any OLC opinion on the applicability of the Emoluments Clauses to President Trump's personal financial interests to enable the public to understand OLC's reasoning and conclusions about the issue?

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

18. Please describe the selection process that led to your nomination to be Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

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

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

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

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

20. Have you spoken with anyone about possible recusal from the Special Counsel's investigation? If so, with whom, when, and what was discussed?

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

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

**RESPONSE: No.**

22. You previously wrote: "The fact that terrorists' actions have been made criminal does not preclude the government from treating them as enemy combatants without any rights under our criminal justice system." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Do you still hold that view?

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

23. You previously wrote: "Thus, where the government sees an *individual* foreign person apparently acting as a terrorist, that should be a sufficient basis to conclude that the individual is not part of 'the people' and thus not protected by the Fourth Amendment." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Is it your position that non-citizens, even those located in the United States, are not protected by the Fourth Amendment of the Constitution? If so, what is the basis for that view?

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

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

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

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

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

25. Does the President have authority under Article II of the Constitution to conduct bulk collection of Americans’ telephone metadata? Please explain your answer.

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

26. You previously wrote: “Numerous statutes were passed, such as FISA, that purported to supplant Presidential discretion with Congressionally crafted schemes whereby judges become the arbiter of national security decisions.” (*Testimony of William P. Barr before the House Select Committee on Intelligence* (Oct. 30, 2003))
- a. In your view, is the President required to follow laws enacted by Congress governing surveillance? If not, please explain the basis for this conclusion.

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

- b. Are there any aspects of existing surveillance law, including the Foreign Intelligence Surveillance Act (FISA), that you believe the President can disregard? Please identify specific legal provisions and the basis for your conclusion that these provisions do not apply to the President.

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

- c. Is the Foreign Intelligence Surveillance Act (FISA) the exclusive means for the President to conduct foreign intelligence electronic surveillance in the United States? Please explain your answer.

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

27. Previous Attorney General nominees, including your predecessor, agreed to seek and follow the advice of career ethics officials about questions of recusal that may arise during service in the Justice Department.

- a. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of the companies — private and public, including parent companies, subsidiaries, and related entities — for which you have served on the board of directors or advisors? These companies include Och-Ziff Capital Management Group, LLC; Dominion Energy, Inc.; Time Warner, Inc.; Holcim (US) Inc. and Aggregate Industries Management, Inc.; Selected Funds; and Dalkeith Corporation.
- b. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of your legal and consulting clients, including but not limited to Caterpillar and Credit Agricole?
- c. If you will not commit to following the advice of career ethics officials, will you commit to providing to Congress the advice that they provided to you along with an explanation of why you are not following their advice?

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

28. According to the ethics agreement prepared by the Justice Department’s Justice Management Division on January 11, 2019, you agree if confirmed to “not participate personally and substantially in any particular matter involving specific parties in which” the law firm Kirkland & Ellis “is a party or represents a party,” unless you first receive authorization to participate. That prohibition applies for a period of one year after your resignation from Kirkland.

- a. If confirmed, will you commit to following this agreement even if it applies to investigations conducted by Special Counsel Mueller?
- b. If confirmed, will you commit to following this agreement even if it applies more broadly to investigations into potential interference in the 2016 Presidential election, including but not limited to investigations into collusion and/or obstruction of justice?

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

29. During your confirmation hearing to be Attorney General in 1991, you said that the right to privacy in the Constitution does not “extend[] to abortion” and that “*Roe v. Wade* should be overruled.” (S. Hrg. 102-505, Pt. 2, *Confirmation Hearing on the Nomination of William P. Barr to be Attorney General* (Nov. 12, 1991) at p. 63) In a June 1992 hearing before the Senate Judiciary Committee, you echoed these comments and said the Supreme Court’s 1992 decision in *Planned Parenthood v. Casey* “didn’t go far enough” and that “*Roe v. Wade* should be overruled.” (S. Hrg. 102-1121, *Proposed Authorizations for Fiscal Year 1993 for the Department of Justice* (June 30, 1992) at p. 47) At the time you made these remarks *Roe v. Wade* had been established precedent for 18 years. *Roe v. Wade* is now more than 40 years old and has survived more than three dozen attempts to overturn it.

- a. Is *Roe v. Wade* settled law? Do you still believe that *Roe v. Wade* should be overruled?

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

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

includes a right to privacy?

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

30. As Attorney General, you argued that it was proper for the Justice Department to urge the Supreme Court to overturn established precedent. You said that “urging the Court to reconsider a prior decision serves the executive branch’s obligation to the Constitution, without diminishing the Court’s constitutional role.” (15 CARDOZO L. REV. 31 (1993)).

When is it proper for the Justice Department to urge the Court to overturn precedent? What factors should the Department take into account before urging the Court to overturn precedent?

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

31. During an appearance on CNN in July 1992, while you were Attorney General, you said “I think this [Justice] Department will continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation.” (Evans and Novak, CNN Television Broadcast (July 4, 1992))

- a. Will you commit to ensuring that the Department of Justice does not call for reconsideration and overturning of *Roe v. Wade*, if you are confirmed as Attorney General?

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

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

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



**particular case.**

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

**RESPONSE: The Department of Justice will enforce existing law.**

32. At your confirmation hearing, Senator Blumenthal asked whether you would defend *Roe v. Wade* if it were challenged. You responded that “usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that.” (S. Hrg, *Confirmation Hearing on the Nomination of William Barr to Be Attorney General* (Jan. 15, 2019) Tr. at 145)

- a. If confirmed, will you ensure that the Justice Department defends *Roe v. Wade* in court?
- b. Will you ensure that the Department does not argue that state restrictions do not constitute a “substantial burden” on a woman’s right to abortion?

**RESPONSE: Please see my responses to Question 31 above.**

33. At any point before or after your nomination to be Attorney General, has anyone from the Trump Administration discussed with you your views on *Roe v. Wade*? If so, please describe these discussions, including when they took place, who was involved, and what was discussed.

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

34. In the summer of 1991, while you were Deputy Attorney General, the anti-choice group Operation Rescue organized a six-week long protest of three abortion clinics in Wichita, Kansas. The protests resulted in 2,600 arrests. Judge Patrick Kelly, a federal district court judge in Kansas, entered a preliminary injunction barring Operation Rescue and its protestors from blocking access to abortion clinics and physically harassing staff and patients. The Justice Department intervened in the litigation on behalf of Operation Rescue and sought to stay Judge Kelly’s preliminary injunction order.

According to news reports, the Justice Department argued that the abortion clinics had not demonstrated that they would prevail in their lawsuit and that the specific requirements of the order intruded on the Marshals Service’s discretion to enforce court orders. Although Judge Kelly granted the Justice Department’s request to intervene in the lawsuit, he reportedly said he was “disgusted by this move” and he characterized the Justice Department’s involvement as political. (*U.S. Backs Wichita Abortion Protestors*,

ASSOCIATED PRESS (Aug. 7, 1991)).

During this time, the Justice Department was involved in a similar case in Virginia – *Bray v. Alexandria Women’s Health*. This case concerned a lawsuit by several abortion clinics to prevent protesters from conducting demonstrations at clinics. The Justice Department again intervened on behalf of the protesters.

Please describe the nature and extent of your involvement in cases involving abortion clinic protests – including the Kansas and Virginia cases mentioned above – during your tenure as Deputy Attorney General and Attorney General under President George H.W. Bush.

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

35. There has been significant reporting about young migrants being forced to appear in immigration court hearings without adequate representation. For example, there have been reports of toddlers sipping milk bottles as they defend themselves in immigration court without their parents or guardians. (Sasha Ingber, *1-Year-Old Shows Up in Immigration Court*, NPR (July 8, 2018)) Courts have consistently held that anyone on United States soil is protected by the Constitution’s right to due process. (*See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to [the] constitutional protection” in the Fifth and Fourteenth Amendments))

- a. Are toddlers receiving due process when they appear alone in immigration court?
- b. If confirmed, what specific steps will you take to ensure that minors are adequately represented in immigration court proceedings?

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

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

36. At your hearing, Senator Durbin discussed the zero-tolerance policy implemented by then-Attorney General Sessions that led to the separation of over 2,000 children from their parents at the Southern border. Specifically, he asked you whether you agree with the zero-tolerance policy decision. You acknowledged that the Administration walked back its family separation policy in a June 2018 executive order, but you did not directly answer Senator Durbin's question.

- a. Do you agree with the Zero Tolerance policy?
- b. Do you agree with separating children from their parents when they arrive in the United States? If yes, why? If not, why not?
- c. If confirmed, will you commit that the Justice Department will not continue, reinstate, and/or defend policies that lead to family separations?

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

37. If confirmed, will you enact policies that restrict asylum law or lead to prolonged or indefinite detention of children and families? Such policies include changing the definition of "particular social group" to exclude families or forcing parents to choose between being detained with their children and being separated but allowing their children to apply for asylum.

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

38. President Trump has determined that asylum seekers who have already filed asylum claims within the United States will be forced to wait in Mexico while their claims are adjudicated. In Mexico, many of these asylum seekers, including small children, have no fixed address, but instead camp out in stadiums or on the street.

An asylum seeker who demonstrates a credible fear of persecution must receive an opportunity to make his or her case before an immigration judge. This means the asylum

applicant will need to receive documents from the Justice Department, including hearing notices, in Mexico, where they have no fixed address and where legal requirements for service of documents differ from the requirements for service in the United States.

How will the Justice Department ensure that asylum seekers with no fixed address in Mexico receive notice of the time and place of the hearings before the immigration judge, and receive documents regarding their case, including notices of changes in the Immigration Court calendar?

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

39. At your hearing, Senator Hirono asked whether you believe the 14<sup>th</sup> Amendment to the U.S. Constitution guarantees birthright citizenship. You responded that you “have not looked at that issue.” The Citizenship Clause of the 14<sup>th</sup> Amendment states that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

a. Do you agree that the 14<sup>th</sup> Amendment to the U.S. Constitution guarantees birthright citizenship? If not, on what basis did you reach that conclusion?

b. Do you agree that a child born in the United States to undocumented parents is a citizen of the United States? If not, on what basis did you reach that conclusion?

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

40. Last October, President Trump announced plans to prepare an executive order ending birthright citizenship. Do you believe the President has the authority to nullify birthright citizenship by executive order?

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

41. A longstanding principle of U.S. asylum law is that a group of family members constitutes the “‘prototypical example’ of a particular social group” *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985). Nonetheless, the Acting Attorney General referred an immigration case to himself and asked the parties to brief “whether, and under what

circumstances, an alien may establish persecution on account of membership in a particular social group under 8 U.S.C. 1101(a)(42)(A) based on the alien’s membership in a family unit.” (*Matter of L-E-A-*, 27 I&N Dec. 494 (A.G. 2018)) If confirmed, will you review the grounds for certifying this question to the Attorney General and, if you agree with the decision to do so, explain the basis for that decision to this Committee?

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

42. Under federal law, fugitives cannot legally purchase or possess guns. I am deeply troubled that the Justice Department has now issued guidance that forced the FBI National Instant Criminal Background Check System database — also called NICS — to drop more than 500,000 names of fugitives with outstanding arrest warrants. I know that local law enforcement shares these concerns. Apparently, the FBI was forced to drop these names because the Justice Department has further narrowed the definition of “fugitive” to include only those who cross state lines to avoid prosecution.

a. If confirmed, will you commit to reviewing the Justice Department’s decision about who qualifies as a “fugitive”?

b. Do you think this decision put public safety at risk? Why or why not?

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

43. Following the murders of nine churchgoers at Emanuel AME church in South Carolina in 2015, the FBI admitted it did not properly obtain information regarding the gunman’s drug arrest record, which should have prohibited him from buying a handgun. Because the FBI had not received the correct information within 3 days, the dealer was legally permitted to complete the sale to the gunman. As a result, 9 were killed.

Would you support extending or eliminating the three-day requirement that allows a gun dealer to transfer a gun without a completed background check? If not, please explain why you would not support this change.

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

44. I am increasingly concerned about legislation that would imperil police officers in California and nationwide, specifically a proposal to force every state to recognize

concealed-carry permits issued by other states, even those states that have less stringent standards for issuing concealed carry permits. Major national law enforcement organizations, such as the International Association of Chiefs of Police and the Major Cities Chiefs Association, have recognized how dangerous such a proposal would be for officers nationwide.

- a. Do you believe the Second Amendment requires California to recognize a concealed-carry permit from Alabama or Texas? Do you believe that this is required by any other constitutional provision? Please provide a yes or no answer and explain your reasoning.
- b. What is your position on legislation that requires one state to recognize concealed-carry permits issued by other states? Please explain the basis for your views.

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

45. The Administration recently issued a regulation to ban bump stocks, which essentially transform semi-automatic rifles into machineguns. In 2017, bump stocks enabled the shooter in Las Vegas to carry out the most catastrophic mass shooting in American history. That regulation, however, has now been challenged in court, and it may not be upheld. A law, however, would not be vulnerable to the same sort of challenge. If confirmed, do you commit to support legislation to ban bump stocks?

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

46. Many domestic violence abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are still able to stockpile an arsenal of firearms and ammunition. That is despite being prohibited from possessing firearms or ammunition under federal firearms law. Local domestic violence programs often attempt to help victims by seeking enforcement of federal law and removal of the firearms, but they are unable to get assistance from the Department of Justice and other federal agencies. Similarly, local law enforcement is often overwhelmed by the sheer number of firearms in the possession of domestic violence offenders.

If you are confirmed, how will the Department of Justice improve its response to cases like these, which are likely to lead to homicides, and what kind of resources will you devote to make sure that guns are not as accessible to domestic abusers?

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

47. We are at an important moment in our nation with regarding to addressing sexual assault and the MeToo movement. If confirmed as Attorney General, what will the Department of Justice’s role and priorities be with regards to addressing sexual assault through the Office on Violence Against Women and the Office for Victims of Crime?

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

48. If confirmed as Attorney General, will you commit to working with Congress to reauthorize the Violence Against Women Act, including improvements to support the national response to domestic violence, dating violence, sexual assault, and stalking?

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

49. As Attorney General, you will be responsible for enforcing the landmark Voting Rights Act, which has proven instrumental to expanding the right to vote for all Americans, and minorities in particular. But with its 2013 decision in *Shelby County v. Holder*, the Supreme Court gutted the law by severely limiting the ability of the Justice Department to block discriminatory voting laws from taking effect in states with a history of limiting minority voting rights. This majority based its decision on its conclusion that “the conditions that originally justified these measures no longer characterize voting” in states with a history of discriminatory voting practices.

- a. Do you agree that “the conditions that originally justified [the application of preclearance provisions in the Voting Rights Act to certain states] no longer characterize voting” in states with a history of discriminatory voting practices?
- b. If confirmed, would you support legislation to restore the preclearance provisions struck down by the Court in Shelby County?

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

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

50. On October 20, just weeks before the 2018 election, President Trump tweeted: “All levels of government and Law Enforcement are watching carefully for VOTER FRAUD, including during EARLY VOTING.” (President Donald Trump, (@realDonaldTrump), Twitter (Oct. 20, 2018, 8:36 AM)) And the day before the election, President Trump said: “All you have to do is go around, take a look at what’s happened over the years, and you’ll see. There are a lot of people — a lot of people — my opinion, and based on proof — that try and get in illegally and actually vote illegally.” (Amy Gardner, *Without evidence, Trump and Sessions warn of voter fraud in Tuesday’s elections*, WASHINGTON POST, (Nov. 5, 2018))

Are you aware of any evidence that “a lot of people” vote illegally? If not, are you concerned about statements like this undermining the public’s faith in election results?

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

51. Remarkably, in Texas, a voter can show a handgun license to vote, but not a student ID. And in Georgia, the name on a voter registration form must be identical to the applicant’s name as it appears on his or her ID. Any minor discrepancy or clerical error — for example, a hyphen on the voting application that does not appear on the ID — could be grounds for blocking voters from registering or for kicking voters off of the voting rolls. (Janell Ross, *It’s Time for a New Voting Rights Act*, THE NEW REPUBLIC (Nov. 13, 2018))

- a. What is the basis to allow someone to vote if they show a handgun license, but not a student ID?
- b. Is a minor discrepancy between a voter registration form and a photo ID — for instance, a hyphen in the name on a voting application that does not appear on the voter’s ID — a valid reason to purge a registered voter from the voting rolls?

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



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

52. Under longstanding policy, the Justice Department will defend the constitutionality of any statute so long as a reasonable argument can be made in its defense. Attorney General Sessions concluded that no reasonable argument could be made in defense of the ACA and, specifically, the ACA's guaranteed-issue provision. During your confirmation hearing, you told Senator Harris that if you are confirmed, you "would like to review the Department's position" in *Texas v. United States*, which challenges the ACA's constitutionality. You also said that you were open to reconsidering the Department's position in the case. (S. Hrg, Confirmation Hearing on the Nomination of William Barr to Be Attorney General (Jan. 15, 2019) Tr. at 301)

- a. Will you commit, if confirmed, to notifying Congress when you start and when you complete your review of the Department's position in *Texas v. United States*? Will you commit to notifying Congress what the basis is for your decision?
- b. If confirmed, do you commit to consulting with career Justice Department attorneys before making any final decision as to the Department's position in the case?

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

53. The Justice Department announced in October 2018 that it planned to close the San Francisco field office of the Environment and Natural Resources Division. This office has focused on enforcing environmental laws and protecting public resources on the West Coast, particularly in California. I am deeply concerned that the closure of this office will allow polluters in California to avoid complying with our environmental laws.

If confirmed, will you commit to seeing if an alternative location can be identified to keep the office in Northern California?

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

54. You served in the Department of Justice at the time the Americans with Disabilities Act (ADA) was signed into law by President George H.W. Bush, on July 26, 1990. As you know, the ADA received broad, bipartisan support, passing the Senate by a vote of 91-6 and the House of Representatives by a vote of 377-28. When he signed the ADA,

President Bush said the following: “Today we’re here to rejoice in and celebrate another ‘independence day,’ one that is long overdue. With today’s signing . . . every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom.” (*Remarks of President George Bush at the Signing of the Americans with Disabilities Act*, (July 26, 1990)) But, of course, that equality, independence, and freedom depend on vigorous enforcement of the ADA. If confirmed, what specific steps will you take to ensure that the ADA is vigorously enforced?

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

55. I have long been a proponent of funding for anti-methamphetamine programs. I established the COPS Anti-Methamphetamine grants program in 2014 and later supported its authorization in the Substance Abuse Prevention Act. In 2018, 9 states were awarded COPS Anti-Methamphetamine grants, totaling more than \$7 million. These funds go to state law enforcement agencies and enable them to participate in meth-related investigative activities.

In fiscal year 2018, the Justice Department’s budget proposed eliminating funding for this program. Given the increase in methamphetamine related deaths, if you are confirmed as Attorney General, will you commit to prioritizing and requesting funds for this program?

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

56. It is well established that former Attorney General Sessions opposes the legalization of marijuana, regardless of whether it is for medical or recreational purposes. In January of last year, he issued a memorandum to U.S. Attorneys, titled “Marijuana Enforcement.” In this memo, the former Attorney General rescinded what is known as the “Cole Memorandum,” which allowed states to implement their own marijuana laws without fear of federal interference, provided that they were in compliance with eight priority enforcement efforts.

In rescinding this memo, the Attorney General maintained that opioids and fentanyl, not marijuana, were the Department’s primary focus. I agree that other drugs of abuse should be prioritized over marijuana, and do not want to see Californians arrested if they are acting in compliance with State law.

You discussed this issue with Senator Booker at your confirmation hearing, when you said the following: “I am not going to go after companies that have relied on the Cole Memorand[um]. However, we either should have a Federal law that prohibits marijuana everywhere – which I would support myself because I think it is a mistake to back off on marijuana. However, if we want a Federal approach, if we want States to have their own laws, then let us get there and let us get there the right way.” (Hearing Tr. at 171) To clarify your position, please answer the following questions:

What is your position on the legalization of marijuana, whether for medical or recreational purposes?

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

57. In August 2016, the Department of Justice posted a notice in the Federal Register to solicit applications for the bulk manufacture of marijuana, intended to supply legitimate researchers in the United States. I understand that 26 applications, including 3 from California, were submitted in response. It has now been almost 3 years, and the Department has failed to take action on any of these applications. This delay could hinder important research that may lead to the development of FDA-approved drugs. (*Applications to Become Registered under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States*, Federal Register (Aug. 12, 2016))

I asked former Attorney General Sessions about this delay on multiple occasions - both in questions for the record and through staff contact – and still have yet to receive a response as to when a final decision will be made on these pending applications.

If you are confirmed, will you commit to taking immediate action on these applications?

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

58. Studies by the National Institute of Justice have found that drug courts are more effective in reducing rates of recidivism among offenders and cost less per participant as compared to the traditional criminal justice system. (*Do Drug Courts Work? Findings from Drug*

*Court Research*, National Institute of Justice)

Do you support drug court programs, and if confirmed, will you prioritize funding for these programs?

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

59. On March 26, 2018, Commerce Secretary Wilbur Ross issued a memorandum directing the Census Bureau to add a question on citizenship status on the 2020 Census. Secretary Ross said that this question was requested by the Justice Department, which argued that the information is needed to enforce the Voting Rights Act (VRA). (Memorandum from Secretary Ross to Karen Dunn Kelley (Mar. 26, 2018))

The Census Bureau’s decision is currently being challenged in *New York Immigration Coalition v. United States Department of Commerce*. As part of that case, John Gore, the then-Acting Assistant Attorney General for the Civil Rights Division, was recently deposed. In his deposition, Mr. Gore was asked the following: “You agree, right, Mr. Gore, that [citizenship] data collected through the census questionnaire is not necessary for DOJ’s VRA enforcement efforts?” Mr. Gore responded: “I do agree with that. Yes.” (Gore Dep. Tr. at 300, *New York Immigration Coalition v. United States Dept. of Commerce*)

- a. Do you support the inclusion of a question on citizenship in the Census? If so, why?
- b. Do you agree with Mr. Gore that citizenship “data collected through the census questionnaire is not necessary for DOJ’s VRA enforcement efforts”? If not, on what basis do you disagree with his assessment?

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

60. According to Mr. Gore, after the Census Bureau received the Justice Department’s request to add a citizenship question, the Census Bureau suggested that there might be a method *other* than a citizenship question to get citizen voting age population data — also known as CVAP data — to the Justice Department for purposes of VRA enforcement. (Gore Dep. Tr. at 264-265) The Census Bureau’s plan, as detailed by the Census Bureau’s acting director, Dr. Ron Jarmin, in an email to Justice Department officials, was to “utilize[e] a linked file of administrative and survey data the Census Bureau already possesses,” rather than to add a citizenship question. According to Dr. Jarmin, this approach “would result in

higher quality data produced at lower cost.” (Email from Ron S. Jarmin to Arthur Gary re: Request to Reinstate Citizenship Question on 2020 Census Questionnaire (Dec. 22, 2017)) The Justice Department rejected Dr. Jarmin’s offer to meet. According to Mr. Gore, Attorney General Sessions personally directed Mr. Gore to deny the meeting request. (Gore Dep. Tr. at 274 (“Q. And who informed you that the Department of Justice should not meet with the Census Bureau to discuss the Census Bureau’s alternative proposal for producing block-level CVAP data? A. The Attorney General.”))

- a. Should the Justice Department have the best available data for purposes of enforcing the Voting Rights Act? If not, why not?
- b. If confirmed, do you commit to allowing the Justice Department to meet with the Census Bureau to discuss the Bureau’s views as to how to provide the best citizenship data?

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