

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

QUESTIONS FROM SENATOR GRASSLEY

1. At the hearing, I pointed out my concerns about concentration and consolidation in the health care industry and my concerns about the high cost of drugs. I have written and expressed my concerns to the Department of Justice (DOJ) Antitrust Division about certain mergers, and have raised concerns with DOJ and the Federal Trade Commission (FTC) about certain practices in the health care and pharmaceutical industries that I have heard could be anti-competitive.

- a. If confirmed, will you make sure that the Antitrust Division carefully scrutinizes transactions and mergers in the health care and pharmaceutical industries? Will you make sure that the Antitrust Division looks into anti-competitive and abusive practices in these sectors that reduce choice and keep costs high for consumers?

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

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

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

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

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

2. As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I

have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector. I believe that the Antitrust Division needs to dedicate more time and resources to agriculture competition issues. DOJ must play a key role in limiting monopsonistic and monopolistic behavior in agriculture.

- a. If confirmed, can you assure me that agriculture antitrust issues will be a priority for DOJ?

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

3. During consideration of the Hatch-Goodlatte Music Modernization Act (MMA), several colleagues and I inquired about the DOJ Antitrust Division's Judgement Termination Program, specifically as it relates to the consent decrees governing ASCAP and BMI, the two largest performing rights organizations. Because of concerns about the impact that a potential termination of these decrees would have on music industry stakeholders, DOJ assured us that there would be a process of timely consultation and substantial stakeholder input under which these consent decrees would be considered prior to any possible termination. The MMA also provides for congressional consultation and oversight of any DOJ action regarding these consent decrees.

- a. If confirmed, can you ensure that DOJ will provide this Committee with ongoing updates and meaningful advanced notice regarding any proposed modification or termination of the ASCAP and BMI consent decrees?

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

- b. If confirmed, will you commit to working closely with this Committee if DOJ decides to modify or terminate these consent decrees so that Congress can take any necessary legislative action prior to modification or termination of the decrees?

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

4. The *First Step Act* requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will

lead to more inmates being put in prerelease custody, such as residential reentry centers (RRCs). That means we have to make sure that RRCs are appropriately funded.

- a. Will you commit to making sure that there is enough space in RRCs to meeting the needs of prisoners who qualify through earned and good time credits for prerelease custody?

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

5. The *First Step Act* requires the Bureau of Prisons (BOP) to recalculate good behavior credits for all inmates. Previously, inmates could earn up to 47 days per year toward early release for good behavior. The new law allows BOP to apply 54 days per year. However, it now seems BOP plans to delay this recalculation for months which could impact thousands of inmates who should be released under the new law. I don’t see any reason to keep people in prison when the law clearly states they should be released.

- a. In your opinion, what are the justifications for delaying this recalculation and would you foresee any issues if Congress made this good time credit recalculation effective immediately?

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

6. Since 2007, DOJ has used the Justice Reinvestment Initiative to support states that want to take a fresh look at their sentencing and corrections systems in order to improve the public safety return-on-investment on each taxpayer dollar. The Department has supported these states as they implement policies to reinvest savings from reduced correctional populations into evidence-based programs that reduce recidivism, helping states to both cut costs and crime at the same time.

- a. Do you support the Justice Reinvestment Initiative and do you anticipate any modifications in its administration?

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

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

7. Over the years, Congress has appropriated billions of dollars to be used for DOJ grants. These grants are then awarded by DOJ to fund state, local, and tribal governments and nonprofit organizations for a variety of important criminal justice-related purposes. However, at times there have been reports of duplicative grant programs, as well as fraud and abuse.
 - a. If confirmed, will you commit to working with this committee to remove these duplicative programs as well as root out waste, fraud, and abuse in DOJ grant programs?

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

8. Illegal drug traffickers and importers can currently circumvent the existing scheduling regime established in the Controlled Substances Act by altering substances in a lab, which thereby creates a drug that is legal but often dangerous. Under the Controlled Substances Act, an eight-factor analysis of a substance must be conducted to determine potential abuse and accepted medical use. Unfortunately, this is a time-consuming process. With the onslaught of dangerous synthetic drugs continuing to affect thousands of Americans, we must be more proactive and efficient in identifying and prosecuting cases with these substances.
 - a. What do you see as an effective way to address the increasing number of synthetic analogues that enter our country?

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

- b. How can a balance be struck between analyzing drugs for medical use while protecting Americans from these substances' potential dangers and holding drug traffickers responsible for distributing synthetic drugs?

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

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

9. For nearly fifty years, the University of Mississippi has had the sole contract with the National Institute on Drug Abuse (NIDA) to grow cannabis for research purposes. To expand the number of manufacturers, the Drug Enforcement Administration (DEA) submitted a notice in the Federal Register on August 11, 2016, soliciting applications for licenses to manufacture marijuana for research purposes. However, over two years have passed without any new schedule I marijuana manufacturer registrations. Your predecessor, Attorney General Sessions, testified on April 25, 2018 at the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, stating that “[w]e are moving forward and we will add, fairly soon . . . additional suppliers of marijuana under the Controlled [Substances Act].” On July 25, 2018, I sent a letter with other Senators to Attorney General Sessions asking for an update on marijuana manufacturer applications.

a. Will you review this letter and assess the status of the pending marijuana manufacturer applications?

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

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

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

10. Along with Senator Feinstein, I introduced legislation that expands research into a derivative of marijuana known as cannabidiol, or CBD. The Food and Drug Administration (FDA) recently approved Epidiolex, whose main active ingredient is CBD. This FDA-approved drug has since been placed in Schedule V of the Controlled Substances Act. While this is a positive step and will provide a new treatment option for those with two types of intractable epilepsy, it is my understanding that this scheduling action relates only to CBD in an FDA-approved formulation. Senator Feinstein and I wrote to DOJ and Health and Human Services (HHS) on two occasions requesting that a scientific and medical evaluation of CBD be conducted. The first letter was sent on May 13, 2015, and the second letter was sent on November 18, 2018. Both DOJ and HHS agreed to conduct a medical and scientific evaluation of CBD independent of marijuana in 2015.

a. What is the status of this request?

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

- b. What is the anticipated date of completion?

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

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

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

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

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

11. Today's global economy facilitates commerce and a strong American financial system. However, most money within global transactions flows through U.S. banks, which unfortunately makes our financial institutions prone to exploitation by terrorists, drug kingpins, and human traffickers who need to fund their operations. Congress has made efforts to strengthen our laws and make it more difficult for terrorists to move money. However, it has been almost 15 years since Congress took action and updated anti-money laundering laws.

- a. What do you see as the biggest challenges for DOJ in combatting money laundering in our current age of digital currency, global economies, and terrorist financing?

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

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

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

- c. My bill, the *Combating Money Laundering, Terrorist Financing, and Counterfeiting Act*, seeks to improve our nation's anti-money laundering laws. If confirmed, will you commit to working with me to pass meaningful legislation to address money laundering?

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

- 12. China recently stated that it plans to place all fentanyl-like substances on Schedule I in China. This could dramatically decrease the amount of fentanyl and its analogues that flow into the United States.

- a. What can you do in your role as Attorney General to ensure that China executes its promise to place these drugs in Schedule I?

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

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

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

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

13. DOJ is the administrator of immigration laws and the Attorney General has statutory authority to implement and execute these laws, including asylum claims. Over the past few years, we've seen the number of asylum claims filed increase drastically. As many as 80% of these claims are eventually denied as having no legal merit. At the same time, DOJ recently reported that the total asylum backlog exceeds 700,000 cases. 8 U.S. Code Section 1158 clearly states that grants of asylum should only be extended to those applicants who can show that their home country government persecuted them on the base of race, religion, nationality, membership in a particular social group, or political opinion. Last year, then-Attorney General Sessions took up the case of *Matter of A-B*, which restored asylum adjudications to original congressional intent, reversing an Obama-era decision to expand grounds of asylum without Congressional approval.

- a. What is your position for defining the threshold for an initial positive finding of credible fear and the grant of asylum?

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

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

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

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

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

14. Previous administrations have refused to prosecute many previously deported aliens who illegally re-entered the United States. If confirmed, will you prioritize felony illegal re-entry cases?

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

15. There's an ongoing debate about the legality of so-called "sanctuary jurisdictions." Can DOJ and federal law enforcement effectively do their jobs when states and cities across the country refuse to comply with the law?

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

16. Will you commit to enforcing immigration detainer statutes and regulations, and will you use all available tools at your disposal to encourage compliance?

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

17. In 2018, DOJ announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it's the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it's important that the Department continue its investigative and oversight work.

- a. If confirmed, will you ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?

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

18. Current DOJ regulations give the Attorney General the discretion to release certain reports to the public concerning the work of a Special Counsel. If confirmed, will you commit to erring on the side of transparency in releasing information that's in the public interest?

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

19. In February 2018, then-Associate Attorney General Rachel Brand announced that DOJ would begin reviewing the fairness of class action settlements, pursuant to the Attorney General’s authority under the Class Action Fairness Act of 2005 (CAFA)—a bill on which I was the lead sponsor. Congress passed CAFA with bipartisan support to push back against certain abuses in the class action system, particularly where lawyers were cashing in at the expense of class members. I was pleased to hear that DOJ began exercising its review authority under CAFA last year by filing statements of interest where certain proposed settlements appeared unfair to class members.
- a. If confirmed, will you ensure DOJ continues this work in protecting class members from unfair settlements?

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

20. Every day, the Americans with Disabilities Act (ADA) protects countless individuals with disabilities, ensuring physical access to “any place of public accommodation.” For this critically important law to be effective, however, it must be clear so that law abiding Americans can faithfully follow the law. Currently, there is confusion over whether the ADA applies to websites, and if so, what standards should be used to determine website compliance. This lack of clarity benefits only the trial lawyers, and does nothing to advance the cause of accessibility.
- a. If confirmed, will you commit to promptly take all necessary and appropriate actions—including filing statements of interest in pending litigation—to help resolve the current uncertainty?
- b. More broadly, what other steps will you recommend DOJ take under your leadership to combat abusive litigation practices under the ADA?

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

21. In 2010, I authored a change to the False Claims Act that prevents the dismissal of a qui tam action if the government is in opposition to such dismissal and if the action is based on information that may have been publicly disclosed. The purpose of 31 U.S.C. 3730(e)(4) is to allow the federal government to maximize recoveries for taxpayers by

using qui tam relators as a source of information regarding fraud about which the government may not be fully aware. Will you commit to use this provision to prevent unnecessary dismissals of meritorious qui tam cases, especially those where the affected agency supports the continuation of the litigation?

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