

QUESTIONS FOR THE RECORD
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NOMINEE TO BE UNITED STATES ATTORNEY GENERAL

QUESTIONS FROM SENATOR KLOBUCHAR

Recusal

1. During the hearing, you committed to consulting career ethics attorneys at the Department of Justice about whether to recuse yourself from overseeing the Special Counsel's investigation, although you did not commit to following their advice.

- a. Will you make public what the Department's ethics attorneys' recommendations are for any matter before the Department, including the Special Counsel's investigation?

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 goal is to be as transparent as possible while following the Department's established policies and practices.

- b. I asked whether attorneys at your law firm represented individuals or entities in connection with the Special Counsel's investigation. You told me that because you serve as Of Counsel at the firm, you would need to supplement your answer. Please do so here.

RESPONSE: I have consulted with Kirkland & Ellis and they have informed me that the firm does not and has not represented an entity or individual in connection with the Special Counsel's investigation.

Special Counsel's Report

2. You have committed to make as much of the Special Counsel's report public as possible. Under 28 C.F.R. § 600.9(a)(3), the Attorney General must send a report to Congress documenting any instances where the Attorney General prohibited the Special Counsel from taking an action.
 - a. Will you allow the White House or the President's personal lawyers to view or make changes to this report?

RESPONSE: Under 28 C.F.R. § 600.9(a)(3), the Attorney General will transmit a report to Congress upon the conclusion of the Special Counsel's

investigation. The Attorney General may release the report publicly to the extent that the release would comply with applicable legal restrictions. If confirmed, I would handle the report consistent with the regulations and established Department procedures, and I can assure the Committee that any report sent to Congress will be my own and will not reflect changes from anyone outside the Department of Justice.

- b. Would Congress be within its rights to make some or all of this report public if the Department declined to do so?

RESPONSE: Although there could conceivably be information in the Attorney General's report, such as classified information, that may not be publicly disclosed, 28 C.F.R. § 600.9(a)(3) does not itself restrict what Congress may do with the report.

Freedom of the Press

3. I asked you whether the Department of Justice, under your leadership, would ever jail reporters for doing their job. You referenced the Department's guidelines and responded that jail might be appropriate as a last resort. Under Attorney General Sessions, the Department initiated a process to revise the guidelines, which has not been finalized.
 - a. Do you believe that the guidelines need to be changed?
 - b. The current guidelines require the Department to issue an annual report on all subpoenas issued or charges made against journalists. Will you commit to keeping this in place?
 - c. Will you commit to keeping the Judiciary Committee informed of any proposed changes to the guidelines before they are finalized?

RESPONSE: I have not yet had a chance to familiarize myself with the current guidance. The Department of Justice's policies and practices should ensure our nation's security and protect the American people while at the same time safeguarding the freedom of the press.

Management of the Justice Department

4. This Administration has reversed its positions in an unprecedented number of cases. I am concerned about the long-term effects of this on the Justice Department.
 - a. Several career lawyers at the Department declined to sign the briefs in the Texas Affordable Care Act case. If you had been Attorney General, would you have directed the briefs to be filed over their objections?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of this decision, and am not in a position to comment on it. As I stated at my hearing, if confirmed I will review the Department’s position in this case.

- b. A former Office of Legal Counsel lawyer wrote an op-ed in *The Washington Post* in which she described her job as “fashioning a pretext, building an alibi” for the White House’s decisions. How will you restore morale among the Department’s career civil servants?

RESPONSE: I know and have confidence in Assistant Attorney General Engel and in the Office of Legal Counsel. Indeed, I have known some of OLC’s attorneys since I ran the office nearly 30 years ago. I do not know the author of the *Washington Post* op-ed, who works for an advocacy group espousing the notion that the United States has “seen an unprecedented tide of authoritarian-style politics sweep the country.” However, the author’s statement that “[w]hen OLC approves orders such as the travel ban, it goes over the list of planned presidential actions with a fine-toothed comb, making sure that not a hair is out of line” certainly reflects my experience with the Office.

As I stated in my confirmation hearing, “I love the department . . . and all its components . . . I think they are critical institutions that are essential to preserving the rule of law, which is the heartbeat of this country. And I’d like to think that there was bipartisan consensus when I was last in this position that I acted with independence and professionalism and integrity . . . And I feel that I’m in a position in life where I can provide the leadership necessary to protect the independence and the reputation of the Department and serve in this Administration.” As I further stated, “I am not going to do anything that I think is wrong and I will not be bullied into doing anything I think is wrong by anybody, whether it be editorial boards or Congress or the President. I’m going to do what I think is right.”

Voting Rights

- 5. This Administration suggests that voter fraud is a major threat to the integrity of our elections, but a major *Washington Post* study found only 31 credible instances of voter fraud out of more than 1 billion votes cast over 14 years.
 - a. Will you take an evidence-based approach to ensuring the integrity of our elections?

RESPONSE: I have not studied the issue and therefore have no basis to reach a conclusion regarding it. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

- b. Will you commit to enforcing Section 2 of the Voting Rights Act?

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, including through enforcement actions brought under Section 2 of the Voting Rights Act. As with all matters, any decisions regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

Antitrust

6. You and I had a lengthy talk about antitrust issues when we met, and I was glad to hear from you in our meeting that you are committed to renewed thinking about antitrust law.
 - a. We have heard that the demands of merger enforcement have taken limited resources away from monopolization and other civil conduct cases. One of my bills, the Merger Enforcement Improvement Act, would see to it that the antitrust agencies get the resources they need to tackle both mergers and monopolization cases. Can I count on your support in getting this bill passed and implemented?

RESPONSE: I believe that sufficient resources are always necessary to maintain appropriate enforcement, including against anticompetitive mergers and monopolization. If confirmed, I will work with the Antitrust Division to assess what resources are necessary to ensure appropriate and effective enforcement of the antitrust laws. If requested, I would be pleased to review any proposed legislation, to the extent appropriate.

- b. I am concerned about mergers that allow companies to unfairly lower prices that they pay, as buyer power among employers has been linked to stagnant wages. My bill, the Consolidation Prevention and Competition Promotion Act, would forbid these kinds of mergers under the Clayton Act. If you are confirmed, how will you approach the problems posed by monopsonies?

RESPONSE: As I understand, the antitrust laws prohibit mergers that may substantially lessen competition in the purchase of inputs as well as in the sale of products. Section 12 of the current DOJ/FTC Horizontal Merger Guidelines explains how the Antitrust Division evaluates mergers for the potential that they may give firms increased market power over the purchase of inputs and thus the ability to lower input prices. This framework would apply to mergers that create monopsony power, including such power over labor markets.

- c. I have expressed concern regarding the effectiveness of merger consent decrees in protecting competition and consumers. That is why my bill, the Merger Enforcement Improvements Act, would require parties to a consent decree to provide post-settlement data, so that the agencies can measure the effectiveness of their remedies and make improvements. Would post-settlement data be helpful in determining what types of merger remedies are effective and what types are not?

RESPONSE: I understand that some have suggested that post-settlement data may be useful in conducting retrospective reviews of mergers and the effect of consent decrees. If confirmed, I look forward to discussing with the Antitrust Division when and how such retrospective merger reviews might be informative and to working with you should any legislative measures be necessary.

- d. It is clear that we are seeing trends toward increased vertical integration in certain industries, such as healthcare and video content. But after the challenge to the AT&T/Time Warner transaction was announced, a number of commentators characterized antitrust enforcement against a vertical merger as extremely rare, if not unprecedented. If you are confirmed, how will you evaluate the consequences of vertical integration in mergers?

RESPONSE: It is my understanding that some vertical mergers have raised competition concerns and have been the subject of enforcement actions over the past few decades. If confirmed, I will continue the review of vertical transactions to determine whether they are likely to create the incentive and ability for a merged entity to harm competition to the detriment of consumers, in violation of the antitrust laws.

- e. The vertical merger guidelines have not been revised for some time despite multiple calls for the Justice Department and FTC to update them and uncertainty as to the agencies' commitment to vertical merger enforcement. Will you commit to updating the vertical merger guidelines to reflect current Justice Department practices?

RESPONSE: I understand that the Antitrust Division has announced that it is reviewing and considering revisions to the Non-Horizontal Merger Guidelines, published as part of the merger guidelines of 1984. If confirmed, I look forward to learning more about this review and working with the Antitrust Division to make appropriate revisions that will update the guidance consistent with existing law and promote transparency in vertical merger review.

- f. Over the last decade, major online platforms have changed the lives of Americans, allowing them to find information, buy or sell products, and communicate with each other. At the same time, the growing dominance of these companies raises a host of potential antitrust issues, and the lack of competition among platforms appears to keep market forces from disciplining their approaches to consumer privacy. How will you assess the impact of technology platforms on competition?

RESPONSE: I agree that this question raises important issues. If confirmed, I look forward to studying and discussing these issues from a competition standpoint with the Antitrust Division.

- g. In the last two years, the European Commission has issued multi-billion dollar fines against Google for using its dominance in search to give advantages to other Google products and for using its strong position in Android-related markets to maintain its dominance in internet search. According to Assistant Attorney General Makan Delrahim, the European Union (EU) also uses the consumer welfare standard, so why are the levels of enforcement activity so different between the United States and the EU, and what steps will you take to reestablish U.S. leadership in antitrust law?

RESPONSE: The Department is and should continue to be a leader in antitrust enforcement globally. If confirmed, I will study and explore whether there are differences in enforcement activity between the United States and the EU, and what may underlie any differences between the two jurisdictions.

- h. Prescription drug costs impose a heavy burden on consumers and are projected to comprise an increasing proportion of health care costs in the years to come. Curbing pay-for-delay settlements is one way to reduce prescription drug costs, and Senator Grassley and I are leading legislation to help put a stop to these anti-consumer deals for years. If you are confirmed, how will you approach the role of antitrust law in reducing high prescription drug costs?

RESPONSE: Pursuant to long-standing practice, to ensure both the FTC and the Department do not review the same conduct, civil antitrust matters with respect to pharmaceuticals usually are handled by the FTC, whereas the Antitrust Division exclusively handles all criminal enforcement in this industry. If confirmed, I will commit to working with the Antitrust Division to enforce the antitrust laws against any company or individual who conspires to fix drug prices, allocates customers, or otherwise engages in anticompetitive practices, in the pharmaceutical industry.

- i. Antitrust scholars have noted that the threat of private treble damages has driven the courts to constrain the Sherman Act's ability to address anticompetitive conduct by a single firm—which does not just affect private litigants, but government enforcement as well. Will you commit to reevaluating the positions that the Justice Department takes in private enforcement actions in order to expand the scope of enforcement of the antitrust laws?

RESPONSE: I understand that the Department has implemented a program to participate actively in private antitrust cases through the filing of amicus briefs and statements of interest, in order to promote the appropriate and

effective enforcement of the antitrust laws. If confirmed, I look forward to working with the Antitrust Division on these efforts.

White Collar Crime

7. In a November 1993 article in *The Banker*, you argued that the downsides of prosecuting corporations for fraud outweighed the upsides.
- a. If you are confirmed, will you commit to prosecuting white collar and corporate criminals just as you would street criminals?

RESPONSE: Yes, although the question does not accurately characterize my article. I am committed to fully and fairly enforcing the law. As I noted at my hearing, I believe my prior experience overseeing the Department's aggressive response to the savings and loans crisis demonstrates that I will not shy away from prosecuting corporate fraud or other white collar crime.

- b. At a 2004 conference held by the Federalist Society, you said prosecutors in white-collar cases were young and inexperienced, and overreached in corporate investigations. If you are confirmed, those young prosecutors will be looking to you for leadership. Do you stand by what you said in 2004?

RESPONSE: The question does not accurately characterize my speech. Please see my response to Question 7(a) above.

Presidential Records Act

8. According to a January 13, 2019 report in *The Washington Post*, the President has destroyed notes from at least one of his meetings with Russian President Vladimir Putin.
- a. Does the Presidential Records Act apply to the President?

RESPONSE: Yes. The definition of "Presidential records" for purposes of the Presidential Records Act includes "documentary materials ... created or received by the President." 44 U.S.C. § 2201(2).

- b. Do you believe that the Presidential Records Act is constitutional?

RESPONSE: The Supreme Court has upheld the constitutionality of the predecessor statute to the Presidential Records Act, in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), and I believe the rationale of that decision also applies to the Presidential Records Act.

Immigration

9. Attorney General Jeff Sessions narrowed the grounds for asylum claims for victims of private crime. His opinion in *Matter of A-B-* makes very difficult for victims of domestic abuse and gang violence to be granted asylum.

- a. Do you agree with Attorney General Sessions’s decision in *Matter of A-B-*?

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 not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

- b. Asylum statutes dictate that applicants seeking asylum must show that either their “race, religion, nationality, membership in a particular social group, or political opinion” is “at least one of the central reasons for the persecution” of the applicant. Do you interpret the statute’s requirement of “membership in a particular social group” to be independent of the requirement that an applicant demonstrate persecution?

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 not to comment on pending matters, and thus it would not be appropriate for me to comment on this matter.

10. Minnesota has a large Liberian refugee population. In 2007, President George W. Bush directed that Deferred Enforced Departure (DED) be provided for 18 months to certain Liberians whose Temporary Protected Status (TPS) was expiring. Every President after George Bush has extended DED for Liberians since the initial 18 month period was set to expire. Last March, President Trump directed Secretary Nielson to begin winding down DED status. On March 31, 2019, DED ends for Liberians.

- a. Do you agree with President Trump’s decision to end DED status?
- b. What steps will you take to protect Liberians with DED status from being deported?

RESPONSE: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter.

Trafficking

11. One of my highest priorities has been working to combat the scourge of human trafficking. I work closely with members of the Judiciary Committee, including Senator Cornyn, to support survivors of human trafficking and provide resources to federal, state, and local law enforcement officials. We recently passed bipartisan legislation called the Abolish Human Trafficking Act.

- a. If confirmed as Attorney General, what will be your priorities in combating trafficking?

RESPONSE: Rigorous enforcement of our anti-trafficking laws is essential to providing for the security of Americans. I do not know what Departmental resources are currently being devoted to combatting sex trafficking at this time, but if I am fortunate enough to be confirmed, I will evaluate the Departmental resources and needs to determine the best method of fighting the scourge of human trafficking.

Opioid Epidemic

12. Congress will need to continue working with the Justice Department and local law enforcement officers combat the opioid epidemic.
 - a. If confirmed as Attorney General, what steps will you take to combat the opioid epidemic?

RESPONSE: Under my leadership, the Justice Department will work closely with state, local, and tribal law enforcement and other federal agencies in a “whole of government” approach, targeting all aspects of this epidemic, from the over-prescription and diversion of controlled prescription drugs to the illicit trafficking of heroin and fentanyl. I will continue Attorney General Sessions’ efforts to enforce our laws against bad actors in the prescription opioid distribution chain, and I will continue to prioritize opioid related healthcare fraud prosecutions. With regard to illicit opioids, the Justice Department will work with our foreign counterparts, particularly in Mexico, Canada, and China, to stem the flow of illicit narcotics across the southwest border and through our postal system. I will prioritize prosecutions involving synthetic opioids, to include prosecutions involving transnational criminal organizations and prosecutions involving the use of the internet to traffic drugs.

- b. How do you plan to work with local law enforcement to combat the opioid epidemic?

RESPONSE: Local law enforcement officers are our first line of defense to this epidemic. Every day, local law enforcement officers save lives. They respond to drug overdoses and administer Naloxone. They warn the public when it appears that a particularly deadly batch of drugs has caused multiple overdoses. They take steps to protect the children of addicted parents. Local law enforcement officers are critical to our federal response to the epidemic because they know the communities most impacted by the epidemic. If confirmed, I will ensure that our federal agents work closely with state, local, and tribal law enforcement officers through task forces.