

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

QUESTIONS FROM SENATOR LEAHY

1. When I asked you whether you would commit to seeking and following the guidance of Justice Department ethics officials on whether to recuse yourself from Russia investigation, you stated that you would “seek” their advice but that you “make the decision as the head of the agency as to my own recusal.” Thus you’ve fallen short of former Attorney General Sessions’ commitment to seek and follow the Department’s ethics officials with respect to his recusal from the Russia investigation – which he did. And your testimony falls even shorter than that of former Attorney General Richardson’s far stronger commitments, which he made because he believed it was “necessary to create the maximum possible degree of public confidence in the integrity of the process.”
 - a. Whether or not as a technical matter you, as Attorney General, would have the authority to decide whether to recuse yourself, do you agree that following the advice of career ethics officials on the question would help create the “maximum possible degree of public confidence” in the “integrity of the process,” especially given your high profile opinions and writings about Special Counsel Mueller’s investigation?
 - b. If you will not agree to seeking and following the guidance of Justice Department ethics officials regarding whether you should recuse yourself from the Russia investigation, will you commit to providing the House and Senate Judiciary Committees with detailed, contemporaneous documentation showing: (1) the analysis and conclusion of the Department’s ethics officials on the question; (2) your own analysis and conclusion on the question; and (3) if you arrive at a different conclusion from the Department’s ethics officials, a written explanation of why your conclusion is better supported by the law and the facts?

RESPONSE: If confirmed, I will consult with the Department’s career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. I believe the ethics review and recusal process established by applicable laws and regulations provides the framework necessary to promote public confidence in the integrity of the Department’s work, and I intend to follow those regulations in good faith.

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.

2. I asked during your confirmation hearing about your view, as reported in the New York Times in November 2017, that you saw more basis for a federal investigation of the Uranium One deal than an investigation into potential collusion with Russia. You stated to the New York Times at the time that by not pursuing the Uranium One deal, along with investigating the Clinton Foundation, the Justice Department was “abdicating its responsibility.” In response on Tuesday, you disputed the New York Times’ characterization of your assertion regarding Uranium One. You testified that the Uranium One assertion was not in quotes and you were actually making a broader point about the need for the Department to launch investigations in an even-handed, consistent way. You referenced John Huber, the United States Attorney for Utah, who was later appointed, in the spring of 2018, by then-Attorney General Sessions to investigate multiple matters of political interest to Republicans. After this exchange, the New York Times took the unusual step of releasing your email revealing your full comment, which included, in relevant part, “I have long believed that the predicate for investigating the uranium deal, as well as the [Clinton] Foundation, is far stronger than any basis for investigating so-called ‘collusion.’”
 - a. On what basis did you claim in November 2017 that the Uranium One deal was deserving of a federal investigation?
 - b. Do you still believe that the Justice Department is “abdicating its responsibility” to the extent that it is not pursuing the Uranium One matter?
 - c. Do you still believe that the predicate for investigating Uranium One is “far stronger” than for investigating collusion between Russia and the Trump campaign?
 - d. If a president calls for a politically motivated criminal investigation, what is the proper role for the Attorney General? Do you believe an Attorney General must conduct a preliminary review to determine if further investigation is warranted? If so, what could this review entail?

RESPONSE: My November 2017 comments to the New York Times were based on media reporting regarding the Uranium One case and the Special Counsel’s investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. Politics should never be part of the analysis of whether to launch a particular criminal investigation or

prosecution. I am not aware of the extent to which the Uranium One case has been pursued by the Department of Justice, but as I noted during my hearing, it is my understanding from public reporting that U.S. Attorney John Huber may be looking into the matter.

Finally, although it is not inappropriate per se for the President to express a view on the need for a criminal investigation, the Department must always ensure that any investigation is appropriate on the law and the facts before moving forward.

3. During any conversation with President Trump, including the one in summer 2017 regarding legal representation and recently regarding your nomination, did you discuss the Russia investigation? If yes, what was said?

RESPONSE: As I described in my testimony, in summer 2017, I met briefly with the President at the White House. Prior to the meeting, and again during the meeting, I indicated that I was not in a position to represent him in connection with the Special Counsel's investigation. During the meeting, the President reiterated his public statements denying collusion and describing the allegations as politically motivated. I did not respond to those comments. The President also asked my opinion of the Special Counsel. As I testified, I explained that I had a longstanding personal and professional relationship with Special Counsel Mueller and advised the President that he was a person of significant experience and integrity.

On November 27, 2018, I met with the President and then-White House Counsel Emmet Flood to interview for the position of Attorney General. After the President offered me the job, the conversation turned to issues that could arise during the confirmation process. I recall mentioning that I had written a memorandum regarding a legal issue that could arise in the Special Counsel's investigation, and that the memorandum could result in questioning during my confirmation hearing. I do not remember exactly what I said, but I recall offering a brief, one-sentence description of the memorandum. The President did not comment on my memorandum. There was no discussion of the substance of the investigation. The President did not ask me my views about any aspect of the investigation, and he did not ask me about what I would do about anything in the investigation.

On December 5, 2018, following President Bush's funeral, President Trump asked me to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel's investigation. The President has not asked me my views about any aspect of the

investigation, and he has not asked me about what I would do about anything in the investigation.

4. I am very concerned with press freedom around the world, and especially the increasing attacks on journalists in the United States. During your hearing, Senator Klobuchar asked you if the Department of Justice would jail reporters for doing their jobs, and you stated that you could think of a situation where a journalist “could be held in contempt.”
 - a. Can you give specific examples of situations in which you would consider attempting to jail a journalist?

RESPONSE: As I noted during my confirmation hearing, I understand that the Department has policies and practices governing the use of law enforcement tools, including subpoenas, court orders, and search warrants, to obtain information or records from or concerning members of the news media in criminal and civil investigations. I take these policies seriously and did not mean to suggest I would deviate from the existing restrictions. As I mentioned, in light of the importance of the newsgathering process, as well as the First Amendment, I understand that the Department views the use of tools to seek evidence from or involving the news media as an extraordinary measure, using such tools only after all reasonable alternative investigative steps have been taken, and when the information sought is reasonably required for a successful investigation or prosecution.

- b. President Trump regularly expresses his displeasure with many news organizations and reporters by name. How would you ensure that any actions the Department takes are not driven by the President’s politically motivated animosity, or are not tainted by the appearance of a political motivation?

RESPONSE: As I stated many times throughout my hearing, every enforcement decision at the Department of Justice must be based strictly on the laws and the facts, not on partisan, political, or personal interests. If confirmed, I will ensure that the Department abides by this principle.

5. When President Trump fired former Acting Attorney General Sally Yates for refusing to defend his Muslim Ban, you wrote an op-ed defending his decision and criticizing Yates. You argued that when the “president determines an action is within his authority — even if that conclusion is debatable” — the Attorney General’s responsibility is to “advocate the president’s position in court.”
 - a. Is that how you still see the role of the Attorney General — to execute a president’s policy and defend his actions even when his authority is highly questionable or appears to be flawed?

RESPONSE: As I wrote in the op-ed, “[w]hile an official is always free to resign if she does not agree with, or has doubts about, the legality of a presidential order,” the Attorney General has “no authority and no conceivable justification for directing the department’s lawyers not to advocate the president’s position in court.”

- b. If an Attorney General cannot support a president’s policy, do you believe the only option available to him or her is to resign?

RESPONSE: As I’ve stated elsewhere, one role of the Attorney General is to serve as a legal and policy adviser to the President. Indeed, that is one of the roles that Congress has envisioned for the Attorney General since the Judiciary Act of 1789. If the Attorney General does not support a policy, he can also press his case with the President.

6. In the 1990s you often attributed the nationwide spike in crime to a “breakdown of traditional morality” and the “promotion of secularism.” This is how you described it on Larry King Live in 1992: “We have the highest crime rate in the world, and that’s unfortunate. And I think that has to do with a lot of aspects about our society—our heterogeneity, and so forth.” Can you explain what you meant by this comment? Did you believe that our nation’s diversity led to increased crime?

RESPONSE: As I explained in my opening statement, we are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity. The quote from the 1990s to which you refer was part of a larger conversation in which I was discussing the Department of Justice’s policies to combat crime, and Mr. King asked “[w]hat kind of statement is that about our society?” After that quote, I continued to note that “the fact remains that if you commit a crime in the United States your chances of going to prison are the same as in Canada and the United Kingdom. So we’re not more punitive than other countries. The problem that we have is that we have a higher crime rate. But still, when all is said and done, we have less than 1 percent of the population that’s committing most of the predatory violence in our society, and they’re repeat offenders.” As I have said in this and other contexts, the determinants of higher crime rates are complex and include many factors. During my tenure as Attorney General, the Department fought crime and directed that fight at what we believed were the root causes of crime. In the intervening years, I believe it can be demonstrated that our nation has brought down the crime rate due to many of these policies, all while diversity has increased in our country. I do not believe that our nation’s diversity led to increased crime.

7. You’ve long been a proponent of mass incarceration, arguing in 1994 that “increasing prison capacity is the single most effective strategy for controlling crime.” You also

testified during your hearing that your views were shaped by the nation confronting a rise in crime during the early 1990s.

- a. Do you still believe that increasing prison capacity is the most effective strategy for controlling crime?
- b. In recent years, in dozens of states across the country, prison rates and crime rates have fallen together. How do you explain that?

RESPONSE: When I was Attorney General, violent crime had been surging throughout the United States. During my time as Attorney General, the Department implemented a concept called “Weed and Seed.” This program focused on removing violent criminals and repeat offenders from high-crime areas while delivering vital social services to improve neighborhoods in partnership with local communities. This program, among other enforcement actions, helped reduce crime rates and was an effective strategy for controlling crime. By 2017, the violent crime rate was only a quarter of what it was in the early 1990s. I continue to believe that this, and other similar programs, was an effective strategy for controlling crime.

8. During a 1995 panel you claimed that social programs fail to reduce crime and may even exacerbate it. In an article you published in the Michigan Law and Policy Review in 1996 titled “A Practical Solution to Crime in our Communities,” you argued, in part, for the reduction of social programs that, in your view, increase rates of crime. Do you still agree with these ideas?

RESPONSE: When I was in Department leadership, the crime rate had quintupled over the preceding 30 years and peaked in 1992. I believed that an “either/or” approach to crime, where policy makers could either engage in effective law enforcement or fund social programs, had contributed to this problem. Crime in this country has since declined dramatically. I continue to believe that for social programs to work, we need the involvement of and partnership with local communities in addition to effective law enforcement.

9. In 2001, you stated the illicit drug trade should be treated like a national security issue, and that for those involved in trafficking organizations, “there are only two end games: You either lock them up or you shoot them, one or the other.” You also said “I believe you can use law enforcement to some extent, particularly in the U.S., but the best thing to do is not to extradite Pablo Escobar and bring him to the United States and try him. That’s not the most effective way of destroying that organization.” Of course, that is exactly what is happening in the Eastern District of New York right now, with the trial of Joaquin “El Chapo” Guzman. If the options are to either lock them up or shoot them, and you don’t believe the U.S. government should be extraditing people like Escobar, what exactly were you proposing the U.S. government do?

RESPONSE: The point I was raising in 2001 was that in combatting transnational drug trafficking organizations (DTOs), we should always evaluate, based on all the facts and circumstances, how we can most effectively neutralize a specific threat being posed to the United States and our citizens, consistent with our laws and Constitution. Extradition and prosecution in the United States of drug traffickers, including senior DTO leaders, have of course played a critical role in furthering American security and safety.

10. During your previous confirmation hearing, you testified that you “wouldn’t defend regulations . . . if [you] don’t think the regulation is consistent with Congress’s intent.” One of the core statutes governing asylum, 8 U.S.C. § 1158, states that any alien who arrives in the United States “whether or not at a designated port of arrival . . . may apply for asylum.” Despite this statute, President Trump recently issued a rule categorically denying asylum claims made outside of ports of entry. The Supreme Court has upheld a nationwide injunction temporarily halting this rule, but the Justice Department is appealing it. If confirmed, would you instruct the Justice Department to continue defending President Trump’s asylum rule even though it is facially inconsistent with congressional intent and the explicit wording of an unambiguous statute?

RESPONSE: Because this issue is in active litigation, it would not be appropriate for me to comment on it specifically. I am committed to ensuring that the Department faithfully enforces the immigration laws enacted by Congress and supports policies set by the President consistent with the law.

11. The Office of Legal Counsel, which you headed for a year under President George H.W. Bush, is a powerful gatekeeper responsible for determining the legality of the President’s proposed actions. If the President proposes an action—say, declaring a national emergency—based on a characterization of the facts that is demonstrably false, does the OLC have any responsibility to scrutinize those falsehoods as part of its review?

RESPONSE: In my experience, when the Office of Legal Counsel reviews proposed executive orders, it seeks, to the greatest extent possible, to verify the factual and legal predicates for the proposed action, relying upon the experience and expertise of others in the Executive Branch.

12. You have praised former Attorney General Jeff Sessions for “breaking the record for prosecution of illegal-entry cases” and increasing illegal re-entry prosecutions “by 38 percent.” While illegal immigration is no doubt a problem we must address, the Justice Department has finite resources. On November 14, 2018, I wrote a letter to acting Attorney General Matthew Whitaker inquiring whether resources for prosecutions of serious criminal offenses were being re-directed toward immigration prosecutions. Indeed, as immigration prosecutions were ramped up under former Attorney General Sessions, across the border prosecutions of other crimes steadily decreased — without any indication that the rate of these crimes actually subsided. Would you continue the

Department's recent aggressive focus of prosecutorial resources on low level immigration offenses even if the result is the Department is unable to prosecute other serious crimes it once handled?

RESPONSE: The Administration has deemed enforcement of immigration-related offenses a priority. Immigration offenses should be considered for prosecution just as any referral from a law enforcement partner would be considered. As to the remainder of this question, I cannot speculate on a hypothetical question about how I would respond to such a situation, particularly since, as a private citizen, I have little knowledge of particular facts relevant to Department prosecutorial decision-making. As in all matters, I would look at the individualized facts in determining an appropriate course of action.

13. I asked you during the hearing about whether your views of the third party doctrine have evolved given the Supreme Court's recent decision in *Carpenter v. United States*; you testified you had not reviewed the decision. Please do so and respond to the following:

- a. Do you still believe that “no person has Fourth Amendment rights in . . . records left in the hands of third parties”?

RESPONSE: In *Carpenter*, the Supreme Court carved out a narrow exception to the longstanding third-party doctrine for cell-site location information possessed by the service provider. That decision is now the law, and I am committed to following it if I am confirmed as Attorney General.

- b. Do you believe that there comes a point at which collection of data about a person—e.g., metadata, geolocation information, etc.—becomes so pervasive that a warrant would be required, even if collection of one bit of the same data would not?

RESPONSE: I cannot speculate on a hypothetical question. As in all matters, if confirmed, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining, in consultation with the Solicitor General, the appropriate legal position in any particular case.

14. In 1987, the D.C. Circuit Court of Appeals held that Georgetown University's refusal to grant equal rights on campus to two LGBTQ affinity groups constituted a violation of D.C.'s Human Rights Act, which prohibits sexual orientation discrimination by educational institutions. In an article published in *The Catholic Lawyer* in 1995, you wrote that these types of laws seek to “ratify” conduct that was previously considered immoral, and this consequently dissolves any form of moral consensus in society. Do you

still believe that laws granting equal protection to LGBTQ individuals “dissolve any form of moral consensus in society”?

RESPONSE: This question does not accurately convey my views as expressed in the article. If confirmed, I would faithfully enforce federal laws that protect LGBTQ individuals against discrimination.

15. The Violence Against Women Act was enacted in 1994, a year after you left the Department of Justice. Senator Crapo and I worked together to reauthorize the act in 2013. Our 2013 reauthorization expanded protections for many of the most vulnerable among domestic violence and sexual assault survivors – students, immigrants, LGBT victims, and those on tribal lands.

- a. Will you commit to support the implementation of these life-saving protections contained in the 2013 reauthorization?

RESPONSE: If I am confirmed, I will enforce all federal laws, including the 2013 reauthorization of VAWA. It is my understanding that VAWA’s grant programs contain a number of provisions designed to ensure that services reach vulnerable victims, including funding for outreach and services to underserved populations, culturally specific victim services, specialized programming for children and youth, and tribal governments’ strategies to combat violence against Native women. I am firmly committed to ensuring that VAWA programs, and the funds made available by Congress, are employed in the most effective manner possible in furtherance of their stated missions.

- b. During your prior tenure as Attorney General, how did you approach the Department’s responsibility for prosecuting crimes committed on Indian Reservations? How do you intend to ensure that the investigation and prosecution of crime on Native reservations is a priority going forward?

RESPONSE: Then, as now, the U.S. Attorneys were primarily responsible for prosecuting serious crimes in Indian country. In my first tenure as Attorney General, I relied on the Native American Issues Subcommittee (NAIS) of the Attorney General Advisory Committee regarding matters concerning Indian country crime. I will look to the NAIS again, as well as the Office of Tribal Justice, to ensure that prosecution of crime in Indian country continues to be a priority at the Department. I also support innovative projects such as the Office on Violence Against Women’s Tribal Special Assistant US Attorneys program, which encourages joint tribal and federal prosecution of domestic violence and sexual assault offenses.

- c. Will you commit to visiting a tribal court implementing VAWA jurisdiction within your first year, should you be confirmed?

RESPONSE: I would be very interested in visiting Indian country. If confirmed, I will work with relevant components at the Department, including the Office of Tribal Justice and the Office of Violence Against Women, to determine an appropriate time and place for a visit.

16. According to Article II, Section 4 of the U.S. Constitution, “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” In your view, what constitutes a high Crime or Misdemeanor?

RESPONSE: I have not studied this question in any detail. If confirmed, and if the matter came before the Department, I would likely consult with the Office of Legal Counsel on the matter.

17. President Trump has stated many times that voter fraud is rampant in this country and has claimed that millions of votes were illegally cast in favor of Hillary Clinton during the 2016 presidential election. Most recently, President Trump said that people go vote, get back in their cars, put on a disguise and go back in and vote again.
- a. Are you aware of any credible evidence to substantiate either of President Trump’s claims?
 - b. Is it important that when a president makes assertions relevant to the integrity of our voting systems, as well as relevant to potential federal crimes under the purview of the Justice Department, that he or she have a factual basis for doing so?

RESPONSE: I have not studied the issues raised by this question in great detail and therefore 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.

18. When asked by Senator Feinstein about the Constitution’s prohibition on emoluments, you testified that you believed “there is a dispute as to what the emoluments clause relates to,” and that you “couldn’t even tell [Senator Feinstein] what it says.” In 2016, then-Chairman Grassley and Senator Tillis questioned then-Attorney General Lynch on whether the receipt of any payment “from a foreign government or an instrumentality of a foreign government” by a spouse of an executive branch officer violated the Constitution.

Such questions are even more pressing when it is the constitutional officer himself receiving such payments. Given the interest from senators, I trust you have had an opportunity to review the Emoluments Clause since last week. The actual text states that “no person holding any office of profit or trust under [the United States] shall, without the consent of the Congress, accept of any present, emolument, office, or title . . . from any king, prince, or foreign state.”

- a. Since President Trump has not divested from his businesses, does the rent paid by the Industrial and Commercial Bank of China to the President-elect for space at Trump Tower in New York raise concerns vis-à-vis the Emoluments Clause? The Bank, which is owned by the Chinese government, is according to news reports the largest tenant in Trump Tower.
- b. Does money paid by various foreign governments for the use of event space or lodging at the President’s hotel here in Washington raise concerns vis-à-vis the Emoluments Clause?
- c. There are currently several lawsuits regarding a potential violation of the Emoluments Clause, including one from the attorneys general of Maryland and the District of Columbia. While subpoenas were issued a month ago, but the Department of Justice is asking for an appeals court to block this lawsuit from continuing. If confirmed as Attorney General, would you continue to appeal the decision of the District Court and attempt to end the lawsuit?

RESPONSE: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment.

19. The General Services Administration (GSA) leases the Old Post Office Building for the Trump International Hotel in Washington, D.C. Recently, the Inspector General for the GSA issued a report stating that the agency lawyers ignored the constitutional issues that arose when they reviewed the lease after President Trump won the election in November 2016. The Inspector General concluded that, “following the 2016 election, it was necessary for GSA to consider whether President-elect Trump’s business interest in the OPO lease might cause a breach of the lease upon his becoming President. The evaluation found that GSA, through its Office of General Counsel (OGC) and its Public Buildings Service, recognized that the President’s business interest in the lease raised issues under the Foreign Emoluments and Presidential Emoluments Clauses of the U.S. Constitution that might cause a breach, but decided not to address those issues.” This seems to suggest that there is a continuing concern with respect to conflicts of interest, the STOCK Act, and the Emoluments Clause.

- a. What is the Justice Department’s role in enforcing the Emoluments Clause?
- b. If there is an apparent violation, would the Department conduct any inquiry or investigation?

RESPONSE: I have not studied the Emoluments Clause. My understanding is that the interpretation of the Emoluments Clause is currently the subject of active litigation in federal court. Because there is such ongoing litigation, it would not be appropriate for me to comment. Moreover, I am not familiar with the circumstances referenced in your question and therefore am not in a position to comment or make a commitment at this time.

20. Article 36 of the Vienna Convention on Consular Relations (VCCR) requires parties to the treaty to promptly inform, upon arrest, nationals of signatory nations that they have the right to meet with consular officials. The United States is a party to the VCCR, but there are a number of well documented cases in which the U.S. is not in compliance with our Article 36 obligations, and that noncompliance has strained our relationships with a number of important allies including Great Britain and Mexico. To help ensure compliance with Article 36, the U.S. Supreme Court adopted an amendment to Rule 5 of the Federal Rules of Criminal Procedure mandating that a judge presiding at the defendant’s initial appearance inform “a defendant who is not a United States citizen [that he or she] may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant’s country of nationality that the defendant has been arrested.”
 - a. Do you believe full compliance with Article 26 of the VCCR is important?
 - b. Will you commit to ensuring full compliance with respect to any and all undocumented immigrants who are arrested, including if the arrest was executed by the Department of Homeland Security’s Immigration and Customs Enforcement, for “acts that constitute a chargeable criminal offense”?

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

21. In December 2008, the Unaccompanied Alien Child Protection Act was signed into law as part of the Trafficking Victims Protection Reauthorization Act. Among other things, members of Congress worked on the 2008 and 2013 reauthorization bills to ensure that children who arrive in the United States without a parent or guardian, are, to the greatest extent practicable, provided with counsel to represent them in legal proceedings. Not only is it common sense that putting a child alone before a judge is fundamentally unfair and will not result in a just, informed outcome, but legal representation serves as an effective tool to ensure compliance with immigration laws. Studies show that the rate of

unaccompanied minors who show up for immigration court increases from 60.9 percent to 92.5 percent when represented by a lawyer.

- a. Will you commit, if confirmed, to work with the Secretaries of Health and Human Services and Homeland Security to provide as many unaccompanied children as possible with legal representation?
- b. Similarly, will you commit, if confirmed, to facilitating increased collaboration between the Department of Justice's Executive Office for Immigration Review, known as EOIR, and community-based organizations to provide legal representation for migrant children separated from their parents?

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.

22. The Inspector General for the Department of Health and Human Services released a report stating that the family separation policy began in summer of 2017. Thousands of children may have been separated before a court order forced HHS to keep track of the children they were separating from their parents. HHS also says they face challenges identifying the children.
 - a. Do you believe that “zero tolerance” and family separation served as a useful deterrent to migrant families fleeing Central America?

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, and therefore, I am not in a position to comment on its deterrent effects.

- b. Would you consider resurrecting such policies under any circumstances?

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. I cannot speculate on a hypothetical question about future policy decisions made “under any circumstances.” 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.

23. In April 2001 at the Miller Center, you discussed your decision to intern HIV positive refugees in a separate camp on Guantanamo, stating: "We were using Guantanamo Bay, and it seemed like every other week I would be called over to meet with Colin Powell, [Dick] Cheney, and Brent Scowcroft, and they, of course, were complaining Their position was, Guantanamo is a military base, and why were all these people here, the HIV people, all these other people? How long are you going to be on our property with this unseemly business? I'd say, 'Until it's over. But we're not bringing these people into the United States.' This is a very convenient base outside the United States, and it's serving a good function. They were always complaining. I would say, what do you people do at Guantanamo? Maybe this is the highest, best use of Guantanamo. Maybe Guantanamo should be turned over to the INS [Immigration and Naturalization Service] and used as a processing center. Maybe this is the best use for the United States as opposed to whatever you people do with it. We got a little bit feisty." Ultimately, all Haitian refugees were released from Guantanamo after a federal district court found many of their constitutional rights to have been repeatedly violated. It is reported that the Departments of Justice and Homeland Security are currently considering the extra-territorial processing of asylum seekers in Mexico. Many immigration law experts believe that these proposals, like the failed Guantanamo policy, cannot be lawfully executed. Will you commit to ensuring that those who seek asylum in the United States or at our borders will have the opportunity to have their claims processed from within the United States, with all the rights provided by the Constitution and federal law accorded to them?

RESPONSE: I have no knowledge of the facts and circumstances surrounding the proposal you mention beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter. If confirmed, it will be my job as Attorney General to enforce asylum laws as they are enacted by Congress and support policies set by the President consistent with the law.

24. A federal district court judge found that the medical conditions facing HIV positive detainees in Camp Bulkeley - directly under your control - were deplorable and insufficient. In *HCC v. Sale*, Judge Johnson specifically noted that military doctors had made the INS, which was under your control at the time, aware of these problems, but that your agency failed to act: "The military's own doctors have made INS aware that Haitian detainees with T-cell counts of 200 or below or percentages of 13 or below should be medically evacuated to the United States because of a lack of facilities and specialists at Guantanamo. Despite this knowledge, Defendant INS has repeatedly failed to act on recommendations and deliberately ignored the medical advice of U.S. military doctors that all persons with T-cell count below 200 or percentages below 13 be transported to the United States for treatment. Such actions constitute deliberate indifference to the Haitians' medical needs in violation of their due process rights." *Haitian Centers Council Inc. v. Sale*, 823 F.Supp. 1028, 1044 (EDNY 1993). During this

period, one of your spokespeople at the INS, Duane Austin stated publicly, “We have no policy allowing people with AIDS to come enter the United States for treatment. ... They’re just going to die anyway, aren’t they?” A federal district court judge found that the agency directly under your control acted with deliberate indifference to the medical needs of migrants in U.S. government care. Today, the Department of Justice oversees the adjudication of the cases of tens of thousands of migrants in facilities operated by ICE where medical care is again suspect. NGOs report that, consistently, at least half of deaths in ICE custody are attributable to medical negligence. Sexual abuse is reported to be rampant, and DHS’s own Inspector General has found that conditions in immigration detention “undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment.” What can the Department of Justice take to ensure that there is accountability for medical negligence and malfeasance committed by DHS and/or DOJ officials in the immigration detention setting?

RESPONSE: I discussed these issues in my testimony and disagree with Judge Johnson’s characterization. I have no knowledge of these assertions relating to current conditions, and therefore, am not in a position to comment on this matter—particularly insofar as it relates to the operations of another department in the Executive Branch.

25. During your hearing, you stated that you would uphold the law of marriage equality, but that there needs to be accommodations made for religious purposes. However, you stated that the Department of Justice would only have a role in banning anti-LGBTQ discrimination only if Congress passes a law.
- a. What actions would you take, if any, if a state or local official refuses to issue a marriage license to a same-sex couple?

RESPONSE: It would not be appropriate for me to speculate on particular responses to a hypothetical situation. As in all matters, I would look at the facts and follow the law and any policies of the Department in determining what the appropriate steps might be.

- b. When is it appropriate, if ever, to disregard a Supreme Court opinion, such as the one that protected same-sex marriage under the Constitution?

RESPONSE: The Supreme Court has the final word on the interpretation of the Constitution. As I stated at my hearing, I am perfectly fine with the law as it is with respect to same-sex marriage, but accommodation of religion is also necessary.

26. In 2016, Congress reformed the Freedom of Information Act, which codified the “presumption of openness” that requires all administrations to operate with transparency as the default setting. If confirmed as Attorney General, how will you enforce the

presumption of openness? Will you commit to fully enforcing the object and purpose of FOIA and to encourage transparency?

RESPONSE: If confirmed, it will be my goal to be as transparent as possible, consistent with Department policies and practices, applicable laws and regulations, and recognized Executive Branch confidentiality interests. I will ensure that all applicable Freedom of Information Act laws and regulations are properly followed and fully enforced.

27. Several reports have come out that T-Mobile executives have repeatedly booked rooms at President Trump's Washington, D.C. hotel. Many have suggested that the executives have booked this hotel in the interest of furthering the success of the merger between T-Mobile and Sprint, which is being reviewed by the Department of Justice.
- a. Can you guarantee that the decision of the Justice Department's antitrust division merger, if made during your time as Attorney General, will be unaffected by any executives' decision to spend money at the President's hotel?
 - b. What steps will you take to ensure reviews of proposed mergers are free of political considerations?

RESPONSE: As I mentioned at my confirmation hearing, if I am confirmed, I will ensure that all political considerations, including those you mention, will play no role in the Department's law enforcement activities.

28. In 2005, you testified before Congress that constitutional protections do not apply to Guantanamo detainees because "[t]he determination that a particular foreign person seized on the battlefield is an enemy combatant has always been recognized as a matter committed to the sound judgment of the Commander in Chief and his military forces. There has never been a requirement that our military engage in evidentiary proceedings to establish that each individual captured is, in fact, an enemy combatant." You also argued that even if constitutional protections did apply, the military's "[Combatant Status Review Tribunal] procedures would plainly satisfy any conceivable due process standard that could be found to apply." You recommended that Congress consider legislation to "eliminate entirely the ability of enemy aliens at Guantanamo Bay to file habeas petitions." Congress ultimately did so in the Military Commissions Act of 2006, which the Supreme Court held to be an unconstitutional suspension of the Writ of Habeas Corpus in *Boumediene v. Bush*. In *Boumediene*, the Court also found the military review procedures to be constitutionally inadequate. Do you support the holdings in *Boumediene v. Bush* as settled law?

RESPONSE: Yes, the holding in *Boumediene* is binding Supreme Court precedent that the Department of Justice must follow.

29. In 2005, you testified that the Geneva Conventions do not apply to captured individuals affiliated with al Qaeda or the Taliban. The Supreme Court in *Hamdan v. Rumsfeld* rejected this view and held that Common Article III of the Geneva Conventions apply to the conflict in question. Do you support the holdings in *Hamdan v. Rumsfeld* as settled law?

RESPONSE: Yes, the holding in *Hamdan* is binding Supreme Court precedent that the Department of Justice must follow.

30. You stated in 2005 that there “does not appear to be any real argument that these [military commission] trials belong in civilian courts.” Since 9/11, there have been 8 convictions in military commissions, half of which have been partially or fully overturned. By contrast, there have been over 600 individuals convicted of terrorism-related offenses in civilian courts in that same period. The military commission trials of the individuals suspected of committing the 9/11 and U.S.S. Cole terrorist attacks do not yet have start dates. Do you still believe that there is not “any real argument” for prosecuting these cases in Article III federal courts?

RESPONSE: I support the use of both Article III courts and military commissions, as appropriate, for prosecuting perpetrators of terrorism against the United States. In deciding which forum to use in any particular case, the government should evaluate all the facts and circumstances and the law to determine which options are legally and practically available and best serve our national security interests.

31. In recent years, there have been hundreds of cases in which individuals were exonerated based on faulty forensic evidence. This has long been an issue of bipartisan concern, and Senator Grassley and I have raised it on numerous occasions with officials from the Justice Department.

- a. Will you commit to working with Members of this Committee to ensure that law enforcement and criminal justice stakeholders have the strongest and most reliable forensic tools possible to ensure that crimes are solved, public safety is protected, and wrongful convictions are avoided?

RESPONSE: I would be pleased to work with the Committee on these issues.

- b. As you know, the FBI reviewed thousands of cases involving erroneous hair analysis testimony, resulting in the exoneration of innocent people and, in some cases, the identification of the true perpetrators of crimes. They then performed a Root Cause Analysis (RCA) to begin to understand what exactly led to the incredible amount of erroneous testimony. Will you work with the FBI and others to ensure that this RCA is completed promptly and that its results are made public

for review, and to ensure this type of error is not repeated going forward in this or other forensic disciplines?

RESPONSE: Accurate scientific and forensic analysis is important to ensuring and maintaining the integrity of our criminal justice system. I am unfamiliar with the details surrounding the FBI's hair analysis review. If confirmed, I look forward to learning more about this important issue.