

Senator Chuck Grassley, Ranking Member
Questions for the Record
Hampton Dellinger
Nominee to be Assistant Attorney General, Office of Legal Policy

1. Should law firms undertake the pro bono prosecution of crimes?

RESPONSE: My understanding is that local, state, and federal authorities are responsible for the prosecution of crimes and should use proper resources when doing so.

2. Do you agree with Judge Ketanji Brown Jackson in 2013 when she said she did not believe in a “living constitution”?

RESPONSE: I believe the Constitution is an enduring document and I know it constitutes America’s supreme law. Judges are duty bound to apply it faithfully.

3. Is it possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?

RESPONSE: My understanding is that local, state, and federal authorities are responsible for the prosecution of crimes and should use proper resources when doing so.

4. This is from your Twitter account:



- a. To whom were you specifically referring to in this tweet?
- b. Were you referring to Pat Cipollone?
- c. Were you referring to Pat Phiblin?
- d. Were you referring to Judge Starr?
- e. Were you referring to General Barr?
- f. Do you believe the aforementioned lawyers have been “debase[d]”?
- g. Do you still stand by these comments?

RESPONSE: I did not intend any specific reference. If confirmed, I would of course adhere to the Justice Department’s social media policy (Justice Manual, § 1-9.000). In addition, I believe my past service in government demonstrates my ability to work effectively with career professionals as well as appointed and elected leaders regardless of party.

5. This is from your Twitter account:



- a. This tweet refers to now-Attorney General Merrick Garland. In the short time since Judge Garland has served in his Office, the Justice Department has been weaponized, at the behest of President Biden, to attack election-integrity laws in multiple States attempting to institute common-sense election reforms to prevent election fraud. Just yesterday Judge Garland dropped a case in Vermont against a hospital that forced employees to perform abortions. He has halted federal death penalties. Do you still stand by your comment that Judge Garland is a “centrist”?
- b. Do you stand by your statement that President Trump lacked “democratic legitimacy”?
- c. At what level of polling support will President Biden lack democratic legitimacy? Some polling currently has him under 50%.

RESPONSE: I have tremendous respect for Attorney General Garland, and I recognize that whichever candidate assembles 270 electoral votes is a constitutionally legitimate President. If confirmed, I would of course adhere to the Justice Department’s social media policy (Justice Manual, § 1-9.000). In addition, I believe my past service in government demonstrates my ability to work effectively with career professionals as well as appointed and elected leaders regardless of party.

6. This is from your Twitter account:



During President Trump’s administration and tenure, for the first time in many decades the United States did not enter into a war and did not suffer a terrorist attack on American soil. In fact, President Trump brokered a historic peace agreement in the Middle East, shortly after this tweet was authored, the Abraham Accords.

- a. What facts were you relying on when you claimed that President Trump posed such a “great[] national security risk to America”?
- b. Is your view that President Trump posed a greater national security risk than, say, Julius and Ethel Rosenberg or Alger Hiss?

RESPONSE: If confirmed, I would of course adhere to the Justice Department’s social media policy (Justice Manual, § 1-9.000). In addition, I believe my past service in

government demonstrates my ability to work well with career professionals as well as appointed and elected leaders regardless of party.

7. President Trump’s appearance in Lafayette Square on June 1, 2020, following rioting outside the White House prompted the mainstream media to describe the event as a “photo op.” An Inspector General Report released on June 8, 2021, found the following:

that the USPP [U.S. Park Police] had the authority and discretion to clear Lafayette Park and the surrounding areas on June 1. The evidence we obtained did not support a finding that the USPP cleared the park to allow the President to survey the damage and walk to St. John’s Church. Instead, the evidence we reviewed showed that the USPP cleared the park to allow the contractor to safely install the antiscale fencing in response to destruction of property and injury to officers occurring on May 30 and 31. Further, the evidence showed that the USPP did not know about the President’s potential movement until mid- to late afternoon on June 1— hours after it had begun developing its operational plan and the fencing contractor had arrived in the park.¹

- a. Do you accept the results of the independent Inspector General investigation?
- b. What commitments can you give me that you will not similarly jump to conclusions as the Assistant Attorney General for the Office of Legal Policy evaluating cases before you like you did when discussing the clearing of Lafayette Square?

RESPONSE: I respect the work and independence of the federal government’s Inspectors General, and I know of no grounds to question the results of the Lafayette Square investigation. If I am confirmed to be Assistant Attorney General for the Office of Legal Policy, while I will not be deciding cases, I promise to thoughtfully and fairly evaluate information that comes before me.

8. This is from your Twitter account:



¹ Office of the Inspector General, Department of the Interior, “Review of U.S. Park Police Actions at Lafayette Park,” June 8, 2021, available at: <https://www.doioig.gov/reports/review-us-park-police-actions-lafayette-park>

- a. Where in the text of the Constitution (not Supreme Court precedent) does the right to abortion exist?
- b. Under what theory of jurisprudence does a prohibition on prenatal homicide by a duly elected legislature not qualify as “law”? Please be specific.
- c. From where does the “natural right” to abortion arise?
- d. There is near-universal belief in the natural right to life, from the Declaration of Independence to Article 3 of the Universal Declaration of Human Rights. What principles of natural reason allow you to deduce that children lack these rights prior to their birth?

RESPONSE: My legal understanding of those rights is guided by the Supreme Court’s interpretation of the Constitution in *Roe v Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

9. Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?

RESPONSE: No.

10. Do you agree with the following statement: “Respect for human life finds an ultimate expression in the bond of love the mother has for her child. . . . Whether to have an abortion requires a difficult and painful moral decision. While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained”?

RESPONSE: I am not in a position to evaluate the statement generally but, at an individual and personal level, there has been nothing more meaningful to my wife Jolynn and me than being parents.

11. A now-confirmed Justice Department nominee once said, “As a civil rights lawyer with matters that regularly go before the Supreme Court, I can’t underscore how dangerous it will be to have [then-Judge Brett] Kavanaugh on the Court, a man who harbors such bias, rage, fury and is so easily unhinged. We should expect a spike in recusal motions for sure.” For the questions below, please also explain why you agree or disagree with the statement:

- a. Do you agree that Justice Kavanaugh is “dangerous” and “easily unhinged”?
- b. Are you confident that Justice Kavanaugh will be fair in hearing cases from the Justice Department under your leadership?

RESPONSE: I have great respect for the Supreme Court of the United States and fully recognize Justice Kavanaugh’s service as an Associate Justice.

12. Judge Garland was “not familiar with the statement quoted [in the question above]” but “[b]ased on my experience serving with Justice Kavanaugh on the D.C. Circuit for many years, I would not describe him that way.” Do you agree with Judge Garland?

RESPONSE: I do not know Justice Kavanaugh, but I have no basis on which to disagree with the Attorney General.

13. The Attorney General also expressed his confidence in Justice Kavanaugh’s ability to “be fair in hearing cases”? Do you agree with Judge Garland?

RESPONSE: I have no basis on which to disagree with the Attorney General.

14. During your hearing, you praised Judge Garland for his commitment to preserve the “independ[ce]” and the “integrity” of the Justice Department. You stated that you were very comfortable with Judge Garland’s mandate to depoliticize the Justice Department and remove any remaining partisanship at the Justice Department.

- a. Do you believe that the Justice Department, under Attorney General Bill Barr was similarly “independent” and filled with “integrity”?
- b. Do you believe that the Justice Department, under Attorney General Eric Holder, was “independent” and filled with “integrity”?
- c. Do you believe that the Justice Department, under Attorney General Mike Mukasey, was “independent” and filled with “integrity”?
- d. Do you believe that the Justice Department, under Attorney General Alberto Gonzales, was “independent” and filled with “integrity”?

RESPONSE: In commenting on Attorney General Garland’s independence and integrity, I did not intend to compare him to any other person who has served in the position.

15. How do you intend to fulfill Judge Garland’s mandate to maintain the independence and integrity of the Justice Department, assuming that you are confirmed as the AAG of OLP?

RESPONSE: I believe the wide range of clients and viewpoints I have represented, as well as the strong working relationships I have had with elected, appointed, and nonpartisan career officials, signals my understanding of the need for law enforcement agencies such as the Justice Department to maintain independence and integrity. In addition, since being nominated, I have spoken with prior AAGs for OLP spanning several administrations (Republican and Democrat), and I appreciate their advice. If confirmed, that would guide me, along with input from career attorneys in OLP, on ways to maintain the independence and integrity of the Office in particular and the Department generally.

16. Given your opposition to President Trump’s judicial nominees, do you agree that it’s reasonable for liberals or conservatives to prioritize jurisprudence over personal characteristics in judicial selection?

RESPONSE: I have never expressed and do not feel blanket opposition to the nominees of any prior President. I know several of President Trump’s nominees (now confirmed) personally and I have very high regard for them. As a general matter, I believe unimpeachable integrity is critical for judges. That includes personal integrity and the professional integrity to follow the law, including controlling decisions of the U.S. Supreme Court.

17. Given your opposition to President Trump’s judicial nominees, do you agree that it’s possible to oppose diverse nominees without opposing them *because of* their diverse personal characteristics?

RESPONSE: Yes.

18. Your Twitter account contains inflammatory and vitriolic statements. A fellow Justice Department senior official told senators during her confirmation hearing that she “regret[s] the harsh rhetoric that [she has] used at times in the last several years.” Do you similarly regret your Twitter commentary?

RESPONSE: I do regret the tone of some of my commentary, and, as noted above, I will follow the Justice Department’s social media policy if confirmed. (See Justice Manual, § 1-9.000).

19. The Justice Department—specifically the Office of Legal Policy—often plays a role in judicial selection:

- a. What role do you see yourself playing in that process?
- b. What role do you see Senate consultation playing in that process?
- c. Will you require nominees to pass case-specific “litmus tests”?

RESPONSE: President Biden has made it clear that he intends to nominate highly qualified attorneys to the federal bench who have records of excellence in a wide variety of legal positions, and who “reflect the full diversity of the American people – both in background and in professional experience.” If confirmed, I will be proud to assist the President in that work as the Assistant Attorney General for Office of Legal Policy by assisting in researching and analyzing the records of potential candidates for judicial nomination, and would not involve any “litmus tests”.

The Senate has a longstanding tradition, as I understand it, of suggesting possible nominees to the President, and of course the Senate has the “advice and consent” role prescribed by the Constitution.

20. How do you intend to prepare judicial nominees for hearings before the Senate Judiciary Committee?

RESPONSE: If I am confirmed, I look forward to learning more about the role of the Department in preparing nominees for hearings, but if involved in that preparation, I would intend to familiarize them with the way the Judiciary Committee conducts nominations hearings and the sorts of issues in which the members of the committee are interested.

21. Do you intend to work with home-state Senators to fill district-court vacancies? Why or why not?

RESPONSE: I understand the work of the Office of Legal Policy with respect to judicial nominations to be to assist in researching and analyzing the records of potential candidates for judicial nomination, not to select nominees. That is the job of the President, with the advice and consent of the Senate, as provided for in the Constitution.

22. Do you intend to consult with home-state Senators to fill Circuit-court vacancies? Why or why not?

RESPONSE: I understand the work of the Office of Legal Policy with respect to judicial nominations to be to assist in researching and analyzing the records of potential candidates for judicial nomination, not to select nominees. That is the job of the President, with the advice and consent of the Senate, as provided for in the Constitution.

23. Demand Justice is playing an outsized role in the selection of judicial nominees for President Biden. Do you agree with Demand Justice—that the ideal judicial nominee consists of an individual who tirelessly worked as a public defender (preferably federal), resisted the Trump Administration, and actively promoted liberal, civil rights ideals?

RESPONSE: President Biden has made it clear that he intends to nominate highly qualified attorneys to the federal bench who have records of excellence in a wide variety of legal positions, and who “reflect the full diversity of the American people – both in background and in professional experience.” I agree with his intention.

24. You have worked at several law firms throughout your career. Do you believe that Demand Justice’s aversion to nominating law partners is beneficial to the federal judiciary and the people it serves?

RESPONSE: President Biden has made it clear that he intends to nominate highly qualified attorneys to the federal bench who have records of excellence in a wide variety of legal positions, and who “reflect the full diversity of the American people – both in background and in professional experience.” I agree with his intention.

25. Do you plan to coach judicial nominees prior to their appearances before the Senate Judiciary Committee?
- If yes, how do you intend to address the Democrat-initiated policy of questioning judicial nominees as to which cases were correctly decided?
 - Why is it that the Biden-nominees are comfortable stating that four cases were correctly decided, but refuse to discuss any other cases?

RESPONSE: If I am confirmed, I look forward to learning more about the role of the Department in preparing nominees for hearings, but if involved in that preparation, I would intend to familiarize them with the way the Judiciary Committee conducts nominations hearings and the sorts of issues in which the members of the committee are interested.

26. President Trump nominated Ryan Bounds to the Ninth Circuit in 2018. His confirmation was withdrawn following the late discovery of his college writings—discussing sexual assaults and minorities, among other topics—that were made public after his nomination. Although you disclosed your college op-eds, you authored damning commentary about now-Justice Thomas, writing in college, that “these words—‘justice’ followed by ‘Thomas’—are more than just an oxymoron. The words are an affront, an insult.” Senator Blumenthal, who served as Ranking Member during your hearing, stated the following about Bounds’ college writings in his opening statement (where he also served as Ranking Member) on May 9, 2018:

And after his name went through the State’s bipartisan selection committee process, it was discovered that he had purposely withheld *disqualifying information* from the selection committee. The selection committee said it would not have passed his name had it received that information. That fact alone would be deeply troubling—in fact, alarming. *But, in addition, equally so are his views on people of color, sexual assault, workers’ rights, and LGBT individuals.* (emphasis added).

- Do you believe that opinions expressed in college writings are a suitable grounds for opposing a candidate’s nomination to public office?
- Please explain why, according to the standard set by Senator Blumenthal enumerated above, you did not express “deeply troubling” and “alarming” comments about now-Justice Thomas, an incredibly accomplished black lawyer who overcame childhood poverty and the horrors of Democrat-imposed Jim Crow segregation policies to earn a nomination to the Supreme Court.
- Why shouldn’t your comments about now-Justice Thomas—who earned every position he worked for and could not rely on a legal pedigree spanning generations—be disqualifying?

- d. Do you regret contributing to Justice Thomas’ “high-tech lynching” by perpetuating degrading, yet all-too-common, racist tropes about black men?

RESPONSE: I wrote those comments approximately 30 years ago while a student and at a time of a contentious and momentous nomination and confirmation hearing. I recognize and respect Justice Thomas’s service on the Supreme Court.

27. In the same editorial where you authored blatantly racist commentary about now-Justice Clarence Thomas, you noted that millions of Americans “believe Anita Hill.”

- a. Do you “believe” Tara Reade, a woman who accused President Biden of sexual assault?
- b. Do you “believe” the eleven women who accused New York’s Governor Andrew Cuomo of sexual harassment?
- c. Do you “believe” Vanessa Tyson, who accused Virginia’s Lieutenant Governor, Justin Fairfax, of sexual assault?
- d. Do you “believe” Meredith Watson, who accused Virginia Lieutenant Governor, Justin Fairfax, of sexual assault?
- e. Do you “believe” Juanita Broaddrick, who accused President Bill Clinton of sexual assault?
- f. Did you author any timely op-eds in any newspaper of record, criticizing the aforementioned men for their actions and proclaiming your whole-hearted support for the victims?

RESPONSE: I wrote those comments approximately 30 years ago at a time of a contentious and momentous nomination and confirmation hearing. I recognize and respect Justice Thomas’ service on the Supreme Court.

28. Several weeks ago, an editorial board member of *The New York Times* editorial board appeared on MSNBC and stated that she saw “dozens of American flags” on Long Island pickup trucks, which she described as “just disturbing.” Do you agree that flying the American flag is a way to honor the United States of America? Why or why not?

RESPONSE: Flying the American flag is one of many ways to honor the United States.

29. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

RESPONSE: I believe law enforcement should respond to aggressors armed with a weapon.

30. Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest racial injustice?

RESPONSE: I believe it is appropriate for people to follow health guidelines issued by public health experts.

31. Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest gun control?

RESPONSE: I believe it is appropriate for people to follow health guidelines issued by public health experts.

32. Is it appropriate for the government to use law enforcement to enforce social distancing mandates and gathering limitations for individuals attempting to practice their religion in a church, synagogue, mosque or any other place of religious worship?

RESPONSE: I believe it is appropriate for people to follow health guidelines issued by public health experts.

33. Absent a traditional conflict of interest, should paying clients of a law firm be able to prevent other paying clients from engaging the firm?

RESPONSE: As a matter of legal ethics, a variety of conflicts can prevent representation of a potential new client, and additionally the contractual relationship between a firm and a client can involve considerations beyond conflict issues.

34. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

RESPONSE: No.

35. Do you agree with the proposition that some clients do not deserve representation on account of their:

- a. Heinous crimes?
- b. Political beliefs?
- c. Religious beliefs?

RESPONSE: No.

36. Should judicial decisions take into consideration principles of social "equity"?

RESPONSE: Judges should decide cases based on operative facts and governing law.

37. Do you believe that we should defund police departments? Please explain.

RESPONSE: I do not. I believe we need more resources allocated to public safety.

38. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

RESPONSE: Local government funding decisions are complex and depend on numerous factors. But I do not believe police departments should be “defunded”. I believe we need more resources allocated to public safety.

39. Do you believe legal gun purchases have caused the violent crime spike?

RESPONSE: Increases and decreases in violent crime in different places are caused by a variety of different factors. I do not have enough information to answer your question.

40. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

RESPONSE: I do not have enough information to answer this question.

41. Is gun violence a public-health crisis?

RESPONSE: I agree with the President, who described gun violence as a public-health crisis.

42. Is racism a public-health crisis?

RESPONSE: According to the CDC, racism can “affect the well-being of millions of Americans.”

43. Is the federal judiciary affected by implicit bias?

RESPONSE: I believe that based on our experiences we all can develop views that may affect our understanding, actions, and decisions in an unconscious manner. Public officials, including judges, must try to avoid allowing any improper bias to influence the execution of their responsibilities.

44. Do you have implicit bias? If so, what bias is it? How do you know if it’s implicit?

- a. If you answered yes, how does implicit bias impact you in your day to day role as the founder of a law firm?

RESPONSE: As the Attorney General testified at his confirmation hearing, having biases, “is part of what it means to be a human being.” But as he further explained, it is important to examine any biases we may have in order to try and overcome them and treat people with fairness. That’s what I try to do.

45. Is threatening Supreme Court Justices right or wrong?

RESPONSE: It is wrong to threaten anyone with harm, Supreme Court Justices included.

46. Do you think the Supreme Court should be expanded?

RESPONSE: I look forward to the report of the Presidential Commission on the Supreme Court of the United States, which has been tasked with studying the public debate on Supreme Court Reform. I should acknowledge that a member of my family, Prof. Walter Dellinger, serves on that Commission.

47. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?

RESPONSE: In distinguishing between the two, I would rely on legal definitions of the limits of speech protected by the First Amendment.

48. What fact-checking organization(s) should the United States government trust to accurately assess information?

RESPONSE: The United States government should carefully assess information that it relies on. The appropriate fact-checking organization will depend on the context and specific question at issue, and different components of the government may have differing views on which organizations to rely on and how heavily. As a general matter, it does appear that organizations such as the Government Accountability Office and Congressional Budget Office have enjoyed broad trust and support.

49. Do you believe that the average citizen is capable of serving as his or her own fact-checker without aid from social media or the media?

RESPONSE: I think it would depend on the type of information and the knowledge of the person.

50. According to the Customs and Border Protection, “[f]ederal officials have logged more than 1.1 million apprehensions at the U.S. Mexico border this fiscal year, after another busy month in June.”

- a. Does that number—1.1 million—concern you from a security perspective?
- b. Given that the United States is now dealing with the Delta strain of the COVID-19 virus, shouldn’t we be doing more to screen and/or vaccinate these individuals?

RESPONSE: I do not have enough of a background in either immigration or infectious disease to answer this question.

51. Does the president have the power to remove senior officials at his pleasure?

RESPONSE: Consistent with the law and decisions of the United States Supreme Court, my understanding is that a President can remove certain senior political officials at his or her pleasure, but I am not an expert in this part of Presidential power.

52. Is it possible that removing someone—as is the President’s power—can be for wholly apolitical reasons?

RESPONSE: I am not sure I have enough information to understand fully this hypothetical question, but it certainly seems reasonable to imagine that a President could remove certain officials for apolitical reasons.

53. Is climate change real?

RESPONSE: I know of no reason to question the overwhelming consensus of experts that climate change is real.

54. What presents a greater threat to national security: domestic or international terrorism?

RESPONSE: I believe both are serious threats.

55. Is the federal judicial system systemically racist? Please explain.

- a. If you answered yes, if confirmed, how will you feel comfortable working in a systemically racist system?

RESPONSE: I know that there has been racism in America’s past and I believe that past discrimination can have present effects including in our judicial system. Having participated in the federal judicial system for nearly thirty years (as a law clerk then practicing litigator), I believe that those involved in the system are working hard to ensure fair treatment for all.

56. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun-offenders to the community?

RESPONSE: I do not know enough about the premise of the question to know if these are the only choices with respect to ensuring community safety during the pandemic.

57. If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.

RESPONSE: I believe federal judges must follow all applicable ethical and legal guidelines that govern their conduct.

58. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

RESPONSE: My view of the Second Amendment is guided by the *Heller* and *McDonald* decisions. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers “an individual right to keep and bear arms.” In *McDonald v. Chicago*, 561 U.S. 742 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. I recognize that the individual Second Amendment right recognized in *Heller* was re-enforced by *McDonald*, and that these decisions should and must be followed by lower courts, as well as by local, state, and federal government officials. I also know the importance of firearms ownership to my family, friends, and fellow citizens. And I value greatly the firearms training I have had as part of my past work in law enforcement.

59. If confirmed, as the AAG for OLP, you will provide counsel to the Attorney General. Do you think that the regulations (28 CFR §§ 26.22, 26.23) guiding opt-in assessment by the Attorney General of capital counsel certifications under Chapter 154 of Title 28 allow for the Attorney General to reconsider a final certification decision? If so, what provision in the regulations allows for this?

RESPONSE: I am not familiar with the regulations referenced in the question, but I have tremendous confidence in the Attorney General to do only what is permissible by law.

60. What factors should the Justice Department consider in deciding whether or not to continue to defend the death sentences of Dzhokhar Tsarnaev and Dylann Roof on direct appeal?

RESPONSE: Within the Department of Justice, the decision whether to seek the death penalty is committed to the Attorney General, the Deputy Attorney General, Assistant Attorney General for the Criminal Division, and the U.S. Attorneys; it does not involve the Office of Legal Policy. I am aware that the Department of Justice has asked the Supreme Court to reverse the First Circuit’s decision vacating Dzhokhar Tsarnaev’s death sentence. I am also aware that the Department continues to defend the death sentence imposed on Dylann Roof.

61. In your view, is a personal philosophical or religious objection to the death penalty on the part of President Biden a valid justification to abandon the defense of Dylann Roof’s death sentence on direct appeal?

RESPONSE: Investigation and prosecution decisions of the Department of Justice should be and are made independent of the White House. The Office of Legal Policy is not involved in case-specific decisions.

62. In your view, is a personal philosophical or religious objection to the death penalty on the part of Judge Garland a valid justification to abandon the defense of Dylann Roof’s death sentence on direct appeal?

RESPONSE: Decisions at the Department of Justice under the leadership of the Attorney General are made based on the facts and the law. The Office of Legal Policy is not involved in case-specific decisions.

63. The Office of Legal Policy has already been tasked with coordinating Judge Garland’s efforts to roll back the federal death penalty. Please explain how you see the role of OLP in that process working between the requirements of the laws and Constitution of the United States and the personal policy preferences of President Biden and Judge Garland on the death penalty.

RESPONSE: Attorney General Garland has tasked the Office of Legal Policy with certain death penalty-related reviews. I assume that work is ongoing. If confirmed, I will take the responsibility of coordinating those reviews very seriously, guided by the facts, and, above all, by fidelity to the Constitution and governing laws.

64. The Office of Legal Policy coordinates the Justice Department participation in the “capital counsel” certification program under AEDPA. Under Judge Garland’s leadership, the Justice Department is already trying to roll back—likely against Justice Department regulations—Arizona’s certification under this law. Please explain how you see the role of OLP in that process working between the requirements of the laws and Constitution of

the United States and Justice Department regulations on one hand, and the personal policy preferences of President Biden and Judge Garland on the death penalty on the other.

RESPONSE: The work of the Office of Legal Policy includes helping to formulate policy options that will comply with the law and the Constitution while also advancing the administration's goals.

65. Will you commit, if confirmed, to both seek and follow the advice of the Department's career ethics officials on recusal decisions?

RESPONSE: Yes. During my nomination process, I consulted with the Department of Justice's ethics office and Designated Ethics officer to identify any potential conflicts. If I am confirmed, I will continue to consult with that office and will recuse myself from any matter in which recusal is required.

66. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

- a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?
- b. How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?

RESPONSE: My understanding is that the Supreme Court held in *Burwell v. Hobby Lobby Stores, Inc.* (2014), that a federal court reviewing a claim under the Religious Freedom Restoration Act bears the responsibility of determining whether a law creates a substantial burden on a party's free exercise rights. In doing so, the reviewing court must not second-guess the plausibility or reasonableness of the party's religious beliefs, but rather determine whether those asserted beliefs reflect an "honest conviction" and whether the law "imposes a substantial burden" on the party's ability to act in accordance with those "honest convictions." In that case, the Court held that complying with the law would require the parties' to "seriously violate their religious beliefs", and that not complying with the law would cause "substantial economic consequences", in holding that the burden was substantial.

67. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

RESPONSE: I believe in the important principle of religious liberty, enshrined in the Constitution and federal statutes like the Religious Freedom Restoration Act, which guarantee religious adherents and organizations substantial autonomy to act consistently with their beliefs.

68. Does illegal immigration impose costs on border communities?

RESPONSE: I lack sufficient facts to answer this question.

69. When was the last time you visited the U.S.-Mexico border?

RESPONSE: I have not visited the U.S. – Mexico border.

70. When was the last time you visited the U.S.-Mexico border outside of a port of entry?

RESPONSE: I have not visited the U.S. – Mexico border.

71. Do you believe that immigrants who cross the border illegally should receive citizenship benefits before those who apply and follow the immigration and citizenship process as set forth by law?

RESPONSE: My understanding is that the Office of Legal Policy does not determine whether an immigrant, regardless of how they entered the country, should receive citizenship or related benefits. The U.S. Citizenship and Immigration Services within the Department of Homeland Security is the executive agency responsible for determining whether an immigrant qualifies for citizenship. Within the Department of Justice, the Executive Office of Immigration Review adjudicates immigration cases.

72. Do you believe that illegal immigrants attending state universities should receive in-state tuition benefits?

RESPONSE: I believe this question relates to an op-ed I wrote focusing on specific provisions in the North Carolina Constitution relating to education. These education provisions have been interpreted broadly by the state Supreme Court and without limitation to immigration status. I continue to believe that North Carolina should consider joining the many states who have addressed the issue of college tuition challenges facing undocumented high school graduates.

73. Do Blaine Amendments violate the Constitution?

RESPONSE: My understanding is that the Blaine Amendment was a proposal to amend the U.S. Constitution to prohibit states from aiding religious schools. In *Espinoza v. Montana Dep't of Revenue* (2020), the Supreme Court considered a provision of the Montana Constitution that prohibited any state aid to any school controlled by a “church, sect, or denomination.” The Court held that the Montana Supreme Court’s application of that no-aid provision to strike down a program to provide tuition assistance to parents who send their children to private schools violated the First Amendment.

74. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

RESPONSE: Yes. The Department should take credible allegations of voter fraud and other election abnormalities seriously.

75. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform.

- a. Do you agree with Attorney General Garland, DAG Lisa Monaco, and Associate AG Vanita Gupta that a member of the Federalist Society should be allowed to serve on front-office staff within the Justice Department?

RESPONSE: Yes.

- b. If so, does that mean you would allow a member of the Federalist Society to serve on the Criminal Division front-office staff?

RESPONSE: Yes, I would allow a member of the Federalist Society to serve on the Office of Legal Policy front-office staff.

- c. Do you agree with Attorney General Garland, DAG Lisa Monaco, and Associate AG Vanita Gupta that a member of the Federalist Society should be allowed to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?

RESPONSE: Yes.

76. Please describe the selection process that led to your nomination to be a United States District Judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: I have not been nominated to be a United States District judge. In April 2021, I was contacted by the White House Personnel Office to ask if I would like to be considered for the position of Assistant Attorney General for the Office of Legal Policy. Subsequently, I provided biographical materials to and answered questions posed by White House personnel officials. I also participated in an FBI background check (including an interview) and underwent the OGE financial disclosure and ethics process.

77. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

RESPONSE: No.

- a. Did anyone do so on your behalf?

RESPONSE: No.

78. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

RESPONSE: At some point during the Presidential transition, I recall informing one staff member with the American Constitution Society of my general interest in being considered for a legal position in the Administration but I do not believe I communicated about the Office of Legal Policy specifically.

- a. Did anyone do so on your behalf?

RESPONSE: No.

79. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

RESPONSE: No.

- a. Did anyone do so on your behalf?

RESPONSE: No.

80. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

RESPONSE: No.

- a. Did anyone do so on your behalf?

RESPONSE: No.

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

RESPONSE: My interview with White House personnel took place on Wednesday, April 21, 2021. I also provided biographical information using email. I communicated, by phone and email, with the DOJ ethics and financial disclosure attorney assigned to my potential nomination. The ethics and financial-related communications took place principally in May and June of 2021.

82. Please explain, with particularity, the process whereby you answered these questions.

RESPONSE: The Department of Justice received these questions on August 4, 2021. I worked with Department attorneys, conducted research with assistance, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on August 9, 2021.

**Senator Marsha Blackburn
Questions for the Record
Senate Judiciary Committee**

Hampton Y. Dellinger, Nominee to be Assistant Attorney General for Office of Legal Policy

1. While in law school you wrote that Justice Thomas's title, "Justice", is an oxymoron and an insult and that his decisions on the court are illegitimate. Do you still hold this view?

RESPONSE: I wrote those comments approximately 30 years ago at a time of a contentious and momentous nomination and confirmation hearing. A lot of time has passed, and I recognize and respect his service on the Supreme Court of the United States.

2. In a 2008 letter to the *Wilson Daily Times* you wrote that you supported the constitutional guarantee of *Roe v. Wade* and that it is not an extreme decision. Could you explain your views on abortion and *Roe v. Wade*?

RESPONSE: My understanding of reproductive rights is guided by the Supreme Court's decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), which held that a woman has the right to an abortion subject to restrictions that do not impose an undue burden on that right.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Hampton Yeats Dellinger, to be Assistant Attorney General for the Office of Legal Policy, Department of Justice

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

RESPONSE: Prosecutors exercise discretion in prosecuting cases because they do not have unlimited resources, but the executive cannot refuse to enforce a law based on policy disagreements.

2. Do you personally own any firearms? If so, please list them.

RESPONSE: My family possesses a few decades-old rifles that my wife inherited from her father at the time of his passing.

3. Have you ever personally owned any firearms?

RESPONSE: My family possesses a few decades-old rifles that my wife inherited from her father at the time of his passing.

4. Have you ever used a firearm? If so, when and under what circumstances?

RESPONSE: Yes. When serving in the North Carolina Department of Justice, I volunteered to undergo components of the Basic Law Enforcement Training (B.L.E.T.) required for frontline law enforcement officers in the state. The B.L.E.T. courses took place at the North Carolina Justice Academy in Salemburg, NC and included live and simulated firearms training. As I recall, pistols manufactured by Glock were used for the live training. As a teen, I engaged in some limited hunting activities. I also took riflery classes at YMCA camps.

5. Is the ability to own a firearm a personal civil right?

RESPONSE: Yes. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court of the United States held that, “[t]here seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” *Id.* at 595.

6. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

RESPONSE: No.

7. Is the criminal justice system systemically racist?

RESPONSE: I know that there has been racism in America's past and I believe that past discrimination can have present effects including in our criminal justice system. Having participated in the federal judicial system for nearly thirty years (as a law clerk then practicing litigator), I believe that those involved in the system are working hard to ensure fair treatment for all.

8. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

RESPONSE: Those making political appointments likely consider a variety of elements when assessing qualified applicants so that public servants reflect the diversity of the people they will serve. All such considerations must be consistent with decisions of the U.S. Supreme Court and governing laws and regulations.

9. Is the federal court system infected with systemic racism?

RESPONSE: I know that there has been racism in America's past and I believe that past discrimination can have present effects including in our federal court system. Having participated in the federal judicial system for nearly thirty years (as a law clerk then practicing litigator), I believe that those involved in the system are working hard to ensure fair treatment for all.

10. Can you give examples of this racism in the American court system?

RESPONSE: U.S. Supreme Court decisions from *Batson* (1986) to *Flowers v. Mississippi* (2019) have noted examples of racially disparate treatment in jury selection that appeared to be motivated by discriminatory intent.

11. Do there need to be any "updates" to uproot systemic racism in federal courts? If so, what are they?

RESPONSE: I believe all institutions should make continuous efforts to treat people fairly and without bias of any kind.

12. As a law student, you published an editorial in the Yale Daily News supporting *Roe v. Wade*, and even as you ran for Lt. Governor in 2008, you were outspoken about abortion rights. Where in the text of the Constitution is a guaranteed right to an abortion?.

RESPONSE: My legal understanding of reproductive rights is guided by the Supreme Court's interpretation of the Constitution in *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

13. Can you name any limits that the states can put on abortion which you find unobjectionable?

RESPONSE: My legal understanding of that issue is guided by the Supreme Court's interpretation of the Constitution in *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

14. You tweeted in May 18, 2019, "Yes, there are some women GOPers and a tiny # of Dems who want government not women to control women's bodies. But if there were no Republican men in elected office, there would be no abortion bans." Do you stand by this statement?

RESPONSE: My legal understanding of reproductive rights is guided by the Supreme Court's interpretation of the Constitution in *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

Senator Josh Hawley
Questions for the Record

Hampton Dellinger
Nominee, Assistant Attorney General, Department of Justice, Office of Legal Policy

1. **In a tweet on May 18, 2019, you wrote, “Yes, there are some women GOPers and a tiny # of Dems who want government not women to control women's bodies. But if there were no Republican men in elected office, there would be no abortion bans.”**
 - a. **Do you believe that pro-life Americans are motivated by a desire to control women’s bodies?**
 - b. **The Supreme Court has recognized that the state has an interest in “protecting the potentiality of human life.” *Roe v. Wade*, 410 U.S. 113. 162 (1973). Do you believe that this interest is legitimate?**

RESPONSE: My legal understanding of reproductive rights guided by the Supreme Court’s interpretation of the Constitution in *Roe v Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), and more recent decisions on the topic. U.S. Supreme Court decisions are the law of the land, and I accept and respect them as a legal professional regardless of any personal view I might have.

2. **In a tweet on May 15, 2019, you wrote that “calling Alabama legislators ‘lawmakers’ is an affront to the word ‘law.’ What's more lawless than criminalizing a constitutional and natural right.”**
 - a. **What did you mean by this statement?**
 - b. **In your mind, what is the difference between a constitutional and a natural right?**
 - c. **Do you believe that abortion is a natural right?**

RESPONSE: Please see my response to Question 1.

3. **You wrote that you believed the presence of confederate monuments on state property creates a hostile environment in violation of the Civil Rights Act.¹**

¹ Hampton Dellinger, *Delinger: Discarded UNC Plan Dooms Silent Sam Deal and Any Proposed Campus Return*, NC POLICY WATCH (Feb. 11, 2020); Hampton Dellinger, *If Silent Sam’s Fall was Illegal, so too was its Standing*,

- a. **Do you still hold to this position?**
- b. **Explain what Supreme Court precedents you believe are applicable to cases involving monuments, and how they apply to confederate monuments in particular.**

RESPONSE: In 2017, at the request of Black students and faculty members at the University of North Carolina at Chapel Hill, I presented arguments to campus officials on the ways in which a towering Confederate monument in the middle of campus could create a racially-hostile educational environment that violated provisions of the Civil Rights Act of 1964. The arguments were summarized in later media reports and a short op-ed I authored. While I have not updated the research underlying the arguments made then, I am not aware of legal precedents that would undermine the position taken.

My more recent work on behalf of Black residents, clergy, business owners, and other taxpayers seeking to relocate Confederate monuments standing at the entrance of working courthouses has been based on provisions in the North Carolina Constitution, only some of which mirror guarantees in the federal constitution (and, even then, the North Carolina Supreme Court has interpreted state provisions differently from U.S. Supreme Court rulings on their federal right counterparts). So U.S. Supreme Court precedents may be instructive but are not controlling. That said, I am aware of the U.S. Supreme Court rulings in *Pleasant Grove City, Utah v. Sumnum* (2009) and *American Legion v. American Humanist Assn.* (2019). In *Sumnum*, both the opinion of the Court and Justice Stevens' concurrence recognized that there are constitutional restraints on government speech with the concurrence noting specifically that government speakers must obey the Equal Protection Clause. Justice Gorsuch's concurrence in *American Legion* references a Confederate flag but does so in the context of a point about federal standing jurisprudence which I believe is unrelated to a monument lawsuit brought pursuant to state law.

4. **You wrote an op-ed arguing that the University of North Carolina's practice of charging illegal residents of North Carolina out-of-state tuition was immoral and violated the Equal Protection Clause of the North Carolina Constitution.²**

RALEIGH NEWS & OBSERVER (Aug. 21, 2018); *Should All Confederate Statues be Taken Down?*, STATEN ISLAND ADVANCE (Aug. 24, 2018).

² Hampton Dellinger, *N.C. Constitution Argument to End UNC Tuition Discrimination*, WRAL (Oct. 29, 2020).

- a. **Do you still hold to this position?**
- b. **Do you believe that UNC's practice violated the federal Equal Protection Clause?**
- c. **If so, explain the Supreme Court precedents that you believe are applicable to this case.**

RESPONSE: While my op-ed did mention general equal protection, the focus was on specific provisions in the North Carolina Constitution relating to education. These education provisions have been interpreted broadly by the state Supreme Court and without limitation to immigration status. I continue to believe that North Carolina should consider joining the many states who have addressed the issue of college tuition challenges facing undocumented high school graduates.

I considered the issue only in accordance with provisions in the North Carolina Constitution.

Precedents of the U.S. Supreme Court were not applicable to my discussion of the North Carolina Constitution.

5. **Please provide a detailed summary of the process that led to your nomination. Include the following details in particular:**
 - a. **Who first raised the possibility of your nomination?**
 - b. **Have you spoken with any interest groups, such as Demand Justice, concerning your nomination?**
 - c. **How many conversations did you have with White House staff leading up to your nomination?**

RESPONSE: I was approached in April 2021 by the White House Office of Presidential Personnel about being nominated to serve as Assistant Attorney General for the Office of Legal Policy. I participated in a vetting and screening process. In June 2021, I received a formal notification that the President would nominate me.

I did not speak with any interest groups about my nomination for this position. During the Presidential transition period, I did communicate with a staff member at the American Constitution Society about my general interest in being considered for a legal position in the Administration.

**Questions for the Record for Hampton Y. Dellinger
From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

- a. **Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

RESPONSE: No.

- b. **Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

RESPONSE: No.

Senator Mike Lee
Questions for the Record
Hampton Dellinger, AAG, Office of Legal Policy

1. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to oppose any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

RESPONSE: I fully recognize the importance of religious faith in American history and society today, as well as the faith protections enshrined in the First Amendment and laws such as the Religious Freedom Restoration Act (RFRA). Any potential legislative alteration to RFRA should be scrutinized to ensure that it does not compromise the essential original purpose of RFRA: protecting religious liberty. As for any possible executive action, it should be consistent with the Constitution and Congressional enactments.

2. As an Assistant Attorney General, what will you do if the President takes a position that is contrary to the law or not in the interests of the United States?

RESPONSE: I do not expect such an occasion to arise, but if it did I would give my best advice that the law be followed and the best interests of the United States be considered. If my advice were not followed, I would resign.

3. As a nominee for a position in the Executive branch, do you think there are any limits on the President's use of prosecutorial discretion?

RESPONSE: Prosecutors have always exercised discretion in prosecuting cases because they do not have unlimited resources, but the executive cannot refuse to enforce a law based on policy disagreements.

4. Please state for the record your thoughts on the Second Amendment.

RESPONSE: My view of the Second Amendment is guided by the *Heller* and *McDonald* decisions. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers "an individual right to keep and bear arms." In *McDonald v. Chicago*, 561 U.S. 742 (2010), the Court held that the right guaranteed by the Second Amendment is a fundamental individual right that applies to the states as well the federal government. I recognize that the individual Second Amendment right recognized in *Heller* was re-enforced by *McDonald*, and that these decisions should and must be followed by lower courts, as well as by local, state, and federal governments. I also know the importance of firearms ownership to my family, friends, and fellow citizens. And I value greatly the firearms training I

have had as part of my past work in law enforcement.

5. A number of states have enacted so-called “red flag laws” that authorize judges to issue orders for the seizure of otherwise lawfully owned firearms when the owner is found to be a danger to self or others. Do you support the use of red flag orders to seize lawfully-owned firearms? If so, what due process protections should apply to the issuance of these orders? Should a judge be able to order firearm seizures in *ex parte* proceedings, before the respondent has had a chance to answer the allegations in the petition?
6. Do you support banning specific types of firearms?
7. Do you support banning large magazines?
8. Do you support holding firearms manufacturers liable for damage caused by people using their firearms to commit a crime?

RESPONSE to Qs 5-8: The work of the Office of Legal Policy includes helping to formulate policy options that will comply with the law and the Constitution while also advancing the administration’s goals. As noted in response to Question 4, any limitation on individual Second Amendment rights must be consistent with the decisions in *Heller* and *McDonald*.

9. Do you believe, if confirmed as an Assistant Attorney General, that you would have a duty to act in line with your moral code? If so, would you agree that it is part of your duty to ensure that the division under your care does not violate that code?

RESPONSE: If confirmed it would be my duty to act in accordance with the U.S. Constitution, U.S. law, and all ethical guidelines that Department of Justice attorneys are required follow.

10. Along the same lines, let’s assume that someone acting as an agent of the Department of Justice under your control takes actions which contradict your moral code. What responsibility do you feel you would owe for those actions?

RESPONSE: If confirmed, my expectation is that my colleagues will be acting in accordance with the U.S. Constitution, U.S. law, and all ethical guidelines that Department of Justice attorneys are required to follow. If I become aware that a particular individual is not doing so in a particular instance, I would act to ensure that any unlawful or improper conduct is addressed.

11. Will you commit that the Office of Legal Policy of the Department of Justice will not rely upon data or information compiled by the Southern Poverty Law Center considering the serious allegations of systemic sexual harassment, racial discrimination and their ties to domestic terrorism cases?

RESPONSE: I am not aware of the specific allegations referenced but I can say as a general matter that, if confirmed, I would look first to experts within the Justice Department for any necessary data or information. After that, I would rely on trusted sources for accurate and unbiased data and information.

12. There's been a lot of rhetoric over the last year from critics of our criminal justice system suggesting that we should "defund" the police. Do you agree with those critics?

RESPONSE: I do not believe we should defund the police. I believe we need more resources allocated to public safety.

13. Do you believe our federal criminal justice system requires reforms, and if so, what reforms?

RESPONSE: If I am confirmed, I will consider any proposals to reform our criminal justice system based on the facts and the law.

14. For purposes of federal law, when does life begin?

RESPONSE: My understanding is that the U.S. Supreme Court has declined to answer the question and I am not aware of a uniform definition in federal law.

15. Does the definition of when human life begins for purposes of federal law differ from the scientific definition of when human life begins?

RESPONSE: Please see my response to Q 14.

16. At what point in human development does the United States have a compelling interest in protecting a human life?

RESPONSE: In *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), the U.S. Supreme Court held that states may regulate abortion prior to viability based on the state's interest in maternal health and potential life, provided those regulations did not impose and do not have "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."

17. Do you support laws penalizing fetal homicide?

18. Do you support the Unborn Victims of Violence Act of 2004, which provides that a person guilty of killing a child in utero may be punished to the same extent as if they had killed the child's mother, and that a person who intentionally kills a child in utero may be charged as a homicide (i.e., murder or manslaughter)?

19. Given that “homicide” requires the killing of an innocent human being, do you agree that in order to punish someone for violating this statute, the child in utero would have to be a human being?
20. Are there any circumstances which justify the killing of an innocent human being?
21. Do you support the Born Alive Infants Protection Act?
22. Relatedly, would you support any policy that would prohibit the killing of children who survive failed abortions outside the womb?

RESPONSE TO Qs 17-22: The work of the Office of Legal Policy includes helping to formulate policy options at the direction of the Attorney General that will comply with the law and the Constitution while also advancing the administration’s goals.

23. The Biden Administration has defined “equity” as: “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” Do you agree with that definition?

RESPONSE: Yes.

24. What is the difference between “equity” and “equality?”

RESPONSE: I agree with the definition of equity that you detailed in Q 23. Equality is treating everyone the same.

25. In order to achieve “equity,” is it ever necessary to discriminate *against* members of some groups in favor of others?

RESPONSE: As the Attorney General has said, “equity requires accounting for the fact that not everyone starts from the same footing and works to address more longstanding barriers.”

26. If treating people equally before the law results in disparate outcomes, is it acceptable to discriminate against those with favorable outcomes before the law in order to correct that disparity?

RESPONSE: Please see my response to Q25.

27. Congresswoman Ayanna Presley has said, in relation to criminal justice policy: “[w]e must now be every bit as intentional in legislating justice and equity, and that starts with embracing anti-racism as a central tenet of the policymaking process.” Do you plan to institute “anti-racist” policies in the Office of Legal Counsel at the Justice Department? If so, which policies do you plan to institute?

RESPONSE: All policies I would institute if confirmed to be Assistant Attorney General for the Office of Legal Policy would be consistent with the law and any guidance or instruction from the Attorney General.

28. Do you believe that members of historically oppressed minority groups should be treated more favorably than those of other races in prosecutions and sentencing decisions to correct for the effects of systemic racism?

RESPONSE: Sentencing decisions should be made by judges according to the law.

29. The Biden Administration has explicitly adopted a policy of “addressing systemic racism.” White House, “Statement by President Biden on the International Day for the Elimination of Racial Discrimination, March 21, 2021. Given that part of your responsibilities, should you be confirmed, will be carrying out this policy goal, please explain how you define “systemic racism.”

RESPONSE: I know that there has been racism and discriminatory policies in America’s past and I believe that disparate treatment can have present effects. An example of systemic racism would be the decades-long practice of “red lining” maps to establish areas in which houses could not be sold to (or adequately insured if sold to) African-Americans or religious minorities. Realtors would perhaps not be personally biased themselves, but the system of redlining had a racially discriminatory and systemic effect. And the undercutting of generational wealth transfer through home ownership has had long term ramifications.

30. Do you think that speech alone—without a threat or accompanying action—should be prosecuted?

RESPONSE: No.

Senator Ben Sasse
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: “Nominations”
July 28, 2021

For all nominees:

1. Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?

RESPONSE: No.

2. Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?

RESPONSE: No.