

April 29, 2019

The Honorable Lindsay Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

Enclosed please find responses to Questions for the Record that I received from Ranking Member Feinstein and members of the Committee, including from Senators Grassley and Tillis for the Majority side, and from Senators Leahy, Durbin, Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, and Harris for the Minority side, following my appearance before the Senate Committee on the Judiciary on April 10, 2019.

The enclosure responds to more than 350 Questions for the Record (20 from the Majority, and approximately 335 from the Minority), which are supplemental to my responses to the questions in the Committee's Questionnaire, dated February 27, 2019, and the hearing transcript from April 10, 2019.

Sincerely,



Jeffrey A. Rosen

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR GRASSLEY

1. You answered a number of questions at the hearing on April 10, 2019 about the First Step Act and the Justice Department's role in its implementation. You also stated in your written testimony that "[w]e will work together to implement the President's and Congress's bipartisan goal, enshrined in the First Step Act, of giving Americans convicted of certain offenses another chance at a productive life." Part of this law requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will lead to more inmates being placed in prerelease custody, such as residential reentry centers (RRCs). In order for RRCs to function and promote the goal of recidivism, they must be appropriately funded. How does the Justice Department plan to implement this provision in order to ensure that there is enough space in RRCs to meet the needs of prisoners who qualify through earned and good time credits for prerelease custody?

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

2. The First Step Act requires that all inmates have access to evidence-based recidivism reduction programs. You stated during the hearing that one of the best ways to reduce the reentry of incarcerated individuals is through "programming for prisoners and . . . particularly job-related training."
 - a. As Deputy Attorney General, how will you ensure the availability of programming to inmates? Specifically, how will you make sure that job-related training and programming is implemented?

RESPONSE: As I am not currently at the Department, I have not had the opportunity to study programming capacity in the Bureau of Prisons. If confirmed, I look forward to learning more about this issue and the Bureau's programs to ensure compliance with the law.

- b. Do you plan to partner with faith-based groups in developing and offering programs to inmates? If so, please provide information as to why and how they will be used in this area.

RESPONSE: As I am not currently at the Department, I have not had the opportunity to study programming development in the Bureau of Prisons. If confirmed, I look forward to learning more about this issue and the Bureau's programs to ensure compliance with the law.

3. As usual, I have a long list of outstanding oversight requests that the Justice Department and FBI have failed to respond to. I have a number of outstanding requests related to the Clinton, Uranium One, and Russia investigations that I started years ago. In addition, I've been doing oversight of the FBI's handling of the USA Gymnastics investigation for over a year. I've still not received a briefing I requested in February 2018 or a response to a letter I sent in July 2018. Congressional oversight is a constitutional responsibility and the Justice Department has an obligation to be responsive to all congressional inquiries.
 - a. Do you understand that if you are confirmed, you will have an obligation to ensure that the Justice Department and FBI respond to congressional inquiries in a timely manner?

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

- b. Do you understand that this obligation applies regardless of whether a member of Congress is a committee chairman?

RESPONSE: Please see my response to Question 3(a) above.

4. Whistleblowers are critical to exposing government waste, fraud and abuse. They are our eyes and ears on the ground, and their courage to come forward and expose government malfeasance benefits us all. Will you commit to protecting whistleblowers from retaliation, and to promoting a culture that values their important contributions?

RESPONSE: I strongly support federal laws that protect whistleblowers, and I am committed to upholding the letter and spirit of those laws. Whistleblowers perform an important service for the public and the Department of Justice when they truthfully report evidence of wrongdoing. Such individuals should not be subjected to reprisal.

5. In 1986, President Reagan signed into law some very important amendments to the False Claims Act. Since those 1986 amendments, the government has recovered more than \$59

billion in taxpayer money. Most of that is because of whistleblowers who found the fraud and brought the cases at their own risk.

- a. If confirmed, will you vigorously support and enforce the False Claims Act?

RESPONSE: The False Claims Act is a critically important tool used by the government to detect fraud and recover money. If confirmed, I will diligently enforce the False Claims Act.

- b. If confirmed, will you continue current staff and funding levels to properly support and prosecute False Claims Act cases?

RESPONSE: Because I am not currently at the Department, I have not had the opportunity to evaluate the proper level of staff, funding, and support for False Claims Act cases. If confirmed, I will consult with the relevant Department personnel about these issues to ensure that the False Claims Act is diligently enforced.

- 6. A new guidance document developed by the Justice Department last year, known as the “Granston memo,” provides a long list of reasons that the Department can use to dismiss False Claims Act cases. Some of them are pretty vague, such as “preserving government resources.” Of course the government can dismiss obviously meritless cases. But even when the Justice Department declines to participate in a False Claims Act case, the taxpayer can and in many cases still does recover financially. So it’s important to let whistleblowers pursue cases even when the Justice Department isn’t able to be involved.

- a. Under what circumstances can, or should, the Justice Department move to dismiss a False Claims Act case?

RESPONSE: The False Claims Act is a critically important tool used by the government to detect fraud and recover money. If confirmed, I will support the Department’s diligent enforcement of the False Claims Act. In certain cases, it may be appropriate for the Department to move to dismiss a False Claims Act case. This may true, for example, when the Department determines a case is meritless or when there is no evidence to support the allegations in the case. Any decision to dismiss a case should made only after thorough review of the case file and consultation with the litigating attorneys.

- b. In circumstances where the government does not intervene in a False Claims Act case, if confirmed, will you commit to ensuring that the Justice Department does not unnecessarily dismiss False Claims Act cases?

RESPONSE: Please see my response to Question 6(a) above.

7. Deputy Attorney General Rosenstein personally agreed to provide the Judiciary Committee equal access to documents produced to the U.S. House of Representatives, including those pursuant to requests and subpoenas from the Select Committee on Intelligence related to 2016 election controversies. Will you commit to the same equal access agreement?

RESPONSE: I do not currently serve at the Department, and therefore I am not aware of the status of the Department's response to any particular congressional oversight response. If confirmed, I would work to accommodate committees of jurisdiction in both the Senate and the House of Representatives equitably, and in a manner consistent with the Department's significant law enforcement responsibilities.

8. In 2018, the Justice Department announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it's the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it's important that the Department continue its investigative and oversight work. If confirmed, will you work with the Attorney General to ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?

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

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

RESPONSE: I agree that this is an important issue. I am not familiar with this particular program but support the goal of preventing abuses in this context. If confirmed, I look forward to learning more about this program and the Department's efforts.

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

RESPONSE: If confirmed, I will commit to fully analyzing how best the Department can enforce the Americans with Disabilities Act, including whether and the extent to which the ADA might apply to websites.

- b. More broadly, what other steps will you recommend the Department take to combat abusive litigation practices under the ADA?

RESPONSE: Please see my response to question 10(a) above.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR TILLIS

1. Mr. Rosen, earlier this year I sent a letter to the Executive Office for United States Attorneys expressing my support for the allocation of additional funding for the Middle District of North Carolina's United States Attorney's Office to hire additional prosecutors that are needed to address the dramatic increase in organized crime activity in the Middle District. If confirmed, will you commit to looking into this issue and working with me to increase funding for the Middle District?

RESPONSE: The United States Attorney's Offices are critical to the Department's mission. If confirmed, I will look into this issue and work with all United States Attorneys' offices to address any obstacles they face in combatting criminal activity.

2. Senator Feinstein and I have been working together this past year on the issue of international parental child abduction. In March, we wrote a letter to Attorney General Barr regarding the Department's efforts to combat international parental child abduction. Will you commit to increasing prosecutions under the International Child Crime Kidnapping Act and to training federal law enforcement on how this tool can be used to secure the return of American citizen children?

RESPONSE: International parental child kidnapping is a concerning issue, and I appreciate your leadership on this. If confirmed, I will examine this issue more closely and will help ensure that the Department is taking appropriate steps to combat it.

3. Deputy Attorney General Rosenstein made it a priority to prosecute intellectual property theft by foreign and domestic actors. Will you continue his work and make increased prosecutions of intellectual property theft a priority?

RESPONSE: I am aware that the Department has identified intellectual property crime as a priority area due to the wide-ranging economic impact on U.S. businesses and, in some situations, the very real threat to the health, safety, and security of the American public. If confirmed, I look forward to examining this issue in greater depth and will help ensure the Department continues to combat these significant harms.

4. What is the role of antitrust law as it relates to intellectual property?

RESPONSE: Under federal intellectual property laws, markets, not regulators, determine how best to reward inventors for their technological advances. The antitrust laws seek to protect and promote the cycle of competition and innovation, which generates dynamic competition in the marketplace and ultimately allows consumers to reap the benefits of better and more useful products. The policies of the patent laws and antitrust laws are aligned in their mutual aim to foster innovation that creates dynamic competition. They accomplish this objective by ensuring that innovators have adequate incentives to invest in, and monetize, their technological advances.

5. I've heard complaints that some companies are purposefully using the system—specifically the IPR/PGR processes—to prevent competitors from being able to challenge their market dominance. Is this type of conduct within the patent system anticompetitive and subject to possible DOJ antitrust enforcement? Should it be?

RESPONSE: Because I am not currently at the Department, I am not familiar with this issue. If confirmed, I look forward to learning more about these concerns and will work with the Antitrust Division to enforce the antitrust laws in appropriate cases in this area based on a thorough review of the facts and relevant law.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR FEINSTEIN

1. The Department of Justice has a tradition of being insulated from politics. It is the chief law enforcement agency for the federal government and its mission is to represent and serve the interests of the American people, not to serve as the personal lawyer for the President, any President.
 - a. How much information is appropriate to share with the White House about an ongoing criminal investigation?

RESPONSE: The Department has policies in place that govern communications between the White House and the Department. Consistent with the 2009 Holder Memo, initial communications between the Department of Justice and the White House concerning investigations or cases should involve only the Attorney General, the Deputy Attorney General, or the Associate Attorney General. The purpose of these procedures is to prevent inappropriate external political influence on Department of Justice matters. If I am confirmed, I would plan to act in accordance with applicable Department of Justice protocols, including the 2009 Memo on communications with the White House issued by former Attorney General Holder.

- b. Can the White House direct the law enforcement priorities of the Department? If so, are there any limitations?

RESPONSE: As Attorney General Barr has explained, the Attorney General – and by extension, the Department – plays several roles, each with different responsibilities and constraints. For example, the Department is the enforcer of the law, and in that role, the Department’s enforcement decisions must be based on the facts and the law, not on any improper external political considerations. However, the Attorney General – and the Department – also plays a policy role that involves setting legal and law enforcement policy. The Attorney General and Deputy Attorney General are appointed subordinates of the President, and, when acting in that policy role, they may propose and pursue legal policies that are in furtherance of the President’s policy agenda.

2. Do you agree that Congress should be provided the entire Mueller report, without any redactions? If not, on what basis should the contents of that report be limited?

RESPONSE: The Attorney General provided Congress and the public with a redacted report on April 18, 2019. The basis for the redactions was set out in the Attorney General's letter to Congress on March 29, 2019. Also, on April 18, 2019, the Assistant Attorney General of the Office of Legislative Affairs informed the Chairmen and Ranking Members of the Senate and House Judiciary Committees and the "Gang of Eight" that they would be permitted to view a less redacted version of the Mueller Report in camera at the Department of Justice. I am not at the Department, but I understand that the Department works to accommodate Congressional oversight requests in a manner consistent with the Department's significant law enforcement and national security responsibilities and recognized Executive Branch confidentiality interests.

3. Neither you, nor the head of the Criminal Division, nor Attorney General Barr have ever been prosecutors. How do you plan to address this given the Deputy Attorney General oversees both the Criminal Division and all 94 U.S. Attorneys' Offices?

RESPONSE: If confirmed, I intend to consider carefully the views of experienced prosecutors and subject matter experts in the Criminal Division and U.S. Attorneys' Office in order to weigh the relevant factual and legal issues.

4. On certain difficult, close-call, high-profile cases, the final decision on whether to proceed with an indictment is made by the Deputy Attorney General. What factors would you consider in deciding whether to proceed with such an indictment?

RESPONSE: If confirmed, I will be guided on charging decisions by the Principles of Federal Prosecution contained in the Department's Justice Manual, which have long promoted the reasoned exercise of prosecutorial authority and contributed to the fair, evenhanded administration of federal criminal laws. As with all charging decisions, I will consider, among other traditional factors, whether the elements of the offense are satisfied; the sufficiency of the proof; the seriousness of the conduct; any mitigating considerations; and any litigation risk.

5. The position of Deputy Attorney General also oversees the Department's national security efforts. What experience do you have with the type of sensitive national security matters that the Deputy Attorney General oversees?

RESPONSE: Each of my prior roles in public service -- as General Counsel at DOT and General Counsel at OMB, as well as my position as Deputy Secretary at DOT -- has involved some work on classified matters, which I am not at liberty to discuss publicly. In my current position, I have been a participant in several interagency processes coordinated by the National Security Council.

6. One of the big problems with the Administration's fuel economy proposal is the way that it has invited a legal conflict with the state of California. Today, these standards are implemented by agreement as a single, coordinated national program of standards. California was open to discussing changes to this program, but the Administration publicly cancelled negotiations and instead proposed to challenge California's authority to set its own pollution standards. These issues are sure to go to court if the proposed rule is finalized as written.
 - a. Why did you decide it was necessary to challenge California's authority to regulate emissions instead of working with them?

RESPONSE: Although I did not personally participate in the negotiation meetings, I am aware that representatives of the Environmental Protection Agency (EPA), the Department of Transportation (DOT), and California met and discussed these issues over an extended period of time. The National Highway Traffic Safety Administration (NHTSA) and EPA issued a joint Notice of Proposed Rulemaking (NPRM) for the SAFE Vehicles Rule in August 2018, which was published in the Federal Register at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Among other things, the NPRM explains in detail the statutory analysis. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. At the Department of Justice, do you plan to recuse yourself from lawsuits on this topic?

RESPONSE: I am not currently aware of a basis to conclude that a recusal is required with regard to this topic. However, as with all matters, 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.

7. When you were the General Counsel at the Office of Management and Budget (OMB) -- during the Bush administration -- you reportedly went to great lengths to oppose policies aimed at combating climate change. (Juliet Eilperin and R. Jeffrey Smith, *EPA Won't Act on Emissions This Year*, WASHINGTON POST (July 11, 2008))

- a. Do you believe that climate change is real?
- b. Do you believe it is caused by human activity?
- c. Have you advocated for – or worked on – any policies that would help address climate change?

RESPONSE: I was not interviewed for the Washington Post article you reference and do not regard the brief reference to me in the article to be accurately reported. As I have said many times, I support protecting our environment. With regard to the environment generally, and climate change in particular, I am strongly in favor of the use of science, the scientific method, and empirical measures and data. I have not worked at EPA or other agencies that have primary responsibility for environmental and climate issues, but in other capacities have worked on policies, programs, or legislation that touched on climate change.

- 8. If confirmed, you would have authority over the Department’s Civil Division, which recently argued that the entire Affordable Care Act is unconstitutional and should be struck down. In the past, you have called the ACA a “government takeover of health care,” and you served on an advisory board of the National Federation of Independent Business (NFIB) during the time when the NFIB was challenging the ACA in court. (Jeffrey Rosen, *Obama vs. the Regulators*, WASHINGTON POST (Aug. 6, 2009))

- a. Do you agree with the Justice Department’s argument that the entire Affordable Care Act is unconstitutional?

RESPONSE: As I explained at my confirmation hearing, because I am not currently at the Department, I am not familiar with the specifics of this decision, and because it is in litigation, I am not in a position to comment on it.

- b. Given your previous role and your strong opinions, will you commit to recusing yourself from this issue?

RESPONSE: I am not currently aware of a basis to conclude that a recusal is required with regard to this topic. However, as with all matters, 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.

- 9. You served as the Chief Counsel to the Platform Committee for the Republican National Convention in 2012. The Republican Platform asserted that any legislation to limit gun

clips or magazines violates the Second Amendment. Do you believe that government has the authority to limit the capacity of gun clips or magazines?

RESPONSE: I did not draft the platform and did not have a vote on its contents. As counsel, my main roles were to assist with regard to the Rules of the Convention, and parliamentary order requirements, and to be available to advise the committee, through its three co-chairs, as to existing law. Additionally, to my knowledge, the Department of Justice has not taken a position on this issue.

10. The 2012 Republican Platform also asserted that the Fourteenth Amendment should be understood to restrict women’s reproductive rights. Republican Senator Olympia Snowe wrote an op-ed criticizing “the overly rigid language” in the GOP platform – which failed to include any “exceptions for cases of rape, incest or danger to the life of the mother.” (Olympia Snowe, *The GOP Has a Problem with Women. Here’s How We Can Fix That*, WASHINGTON POST (Aug. 27, 2012))

- a. Do you agree with the 2012 Republican Platform position that the Fourteenth Amendment should be interpreted to restrict women’s reproductive rights?
- b. Do you believe there should be no exceptions in cases of rape, incest, or danger to the life of the mother?

RESPONSE: I did not draft the platform and did not have a vote on its contents. As counsel, my main roles were to assist with regard to the Rules of the Convention, and parliamentary order requirements, and to be available to advise the committee, through its three co-chairs, as to existing law. As Attorney General Barr stated in response to questions from this Committee, abortion cases today are likely to relate to the reasonableness of particular state regulations, and the Solicitor General generally is charged with assessing the Department’s position on those issues. As I am not currently at the Department, I am not in a position to predict what position the Department might take in specific cases.

11. The 2012 GOP Platform also called for stricter voter-ID laws, arguing that they were necessary to prevent voting by noncitizens, which allegedly represented “a significant and growing form of voter fraud.” After taking office, President Trump convened a commission to investigate voter fraud. As the *Associated Press* reported it, “The now-disbanded voting integrity commission launched by the Trump administration uncovered no evidence to support claims of widespread voter fraud, according to an analysis of administration documents released Friday.” (Marina Villeneuve, *Trump Commission Did Not Find Widespread Voter Fraud*, Associated Press (Aug. 3, 2018))

- a. Did you offer the GOP Platform Committee any advice or counsel on the platform language asserting that voting by noncitizens constituted “a significant and growing form of voter fraud”?

RESPONSE: I did not draft the platform and did not have a vote on its contents. As counsel, my main roles were to assist with regard to the Rules of the Convention, and parliamentary order requirements, and to be available to advise the committee, through its three co-chairs, as to existing law. To the best of my recollection, I was not asked to advise about election law issues.

- b. The most significant instance of election fraud in recent years appears to have been during the 2018 election in North Carolina’s 9th Congressional District. Do you have any evidence to support the assertion that voting by noncitizens constitutes “a significant and growing form of voter fraud”? If so, please outline it.

RESPONSE: I condemn election fraud in all of its forms, and if confirmed, I will pursue appropriate steps to ensure that our elections are conducted with integrity.

12. Multiple news outlets have reported that you were one of the leaders of a faction within the Bush administration fighting action on climate change. For example, in one article from 2008, a former Associate Deputy Administrator for the EPA named you as one of the “primary opponents” of greenhouse gas emissions regulations that were proposed and approved by top administration officials, including the White House Deputy Chief of Staff. (Alexander Duncan, *Oil Industry, Cheney Staff Buried GHG Regulations: House Report*, ELECTRIC POWER DAILY (July 21, 2008)) In 2007, the EPA completed an internal analysis concluding that carbon dioxide is a threat to human welfare. According to the *Washington Post*, when the EPA sent its analysis to OMB, “OMB staff refused to open it, and it sat in limbo for months.” The *Post* also reported that the Bush administration edited “its officials’ congressional testimony, refus[ed] to read documents prepared by career employees and approved by top appointees, [and] request[ed] changes in computer models to lower estimates of the benefits of curbing carbon dioxide.” The *Post* added, “Rosen asked at one meeting if carbon dioxide emissions from a tailpipe could be treated differently than those from a power plant, wondering if the molecules are different. The answer was that they are not.” (Juliet Eilperin and R. Jeffrey Smith, *EPA Won’t Act on Emissions This Year*, WASHINGTON POST (July 11, 2008))

- a. Are these press reports accurate? If not, what exactly is incorrect and what is accurate?

- b. Did you ever edit, or direct anyone else to edit, career officials' congressional testimony as it related to the benefits of curbing carbon dioxide specifically or climate change more generally?
- c. Did you ever request changes, or direct other officials to request changes, in computer models – or any other aspect of the EPA's analysis – to lower estimates of the benefits of curbing carbon dioxide?

RESPONSE: I was not interviewed for these press articles and was not aware of them until long after they were published. I do not regard them as accurate. As I explained during my confirmation for Deputy Secretary of Transportation in 2017, when I was General Counsel at OMB, much of the work I did and the advice I gave was privileged, and I generally refrain from discussing it in detail. However, to be clear, I am not aware of anyone altering any scientific data or evidence. In addition, carbon dioxide is a naturally occurring chemical compound made up of a carbon atom covalently double bonded to two oxygen atoms. Among other things, the article's reference to me is inaccurate in that I did not ask whether CO₂ molecules differ from themselves. Having said that, I would add that I would not see it as inappropriate for a lawyer to ask questions to obtain information needed to advise policymakers about legal questions.

13. During your hearing, Senator Whitehouse discussed your record on environmental issues, and he mentioned several news sources by name – specifically *The Washington Post*, *The New York Times*, and *The Atlantic*. In response you said that he was citing “fake news.” The President has repeatedly called *The Washington Post* and *The New York Times* “fake news,” and he has also called the press “the enemy of the people.”
- a. If you're confirmed, you will be the number two law enforcement official in the United States. Do you believe it is appropriate for senior law enforcement officials to refer to major media outlets as “fake news”?

RESPONSE: A free press plays a vital role in a representative democracy such as ours. The public has a strong need for accurate information. When news reports are erroneous, skewed, and/or misleading, they undermine the important objectives that a free flow of information provides. While I respect the role of journalists, and some mistakes are an inevitable part of the process, I do not think inaccurate or biased reporting should be immune from criticism.

- b. What exactly did you mean by the phrase “fake news”? What do you believe was “fake” about the news reports that Senator Whitehouse cited?

RESPONSE: Perhaps there are multiple definitions, but in this context the phrase refers to media accounts that contain inaccurate, erroneous information. What was “fake” in this context was that the articles made references to me that I regard as inaccurate, and they did so without contacting me.

- c. Do you believe that the press is “the enemy of the people”?

RESPONSE: Please see my response to Question 13(a) above.

14. You indicated on your Senate Judiciary Questionnaire that you have been a member of the National Association of Scholars (NAS) since 2012 – and that you were previously a member from approximately 1995 to 2004. *E&E News* reported that NAS “has long cast doubt on established and mainstream climate science.” NAS’s tax filings show – according to *E&E News* – that the organization “has received hundreds of thousands of dollars in funding from the Charles Koch Foundation, as well as the Sarah Scaife Foundation, both of which have supported attacks on climate science.” (*Scientists Say They Want Open Data – But Not Pruitt’s Plan*, E&E NEWS’S CLIMATEWIRE (Apr. 25, 2018))

- a. Why did you join the National Association of Scholars?

RESPONSE: NAS is an organization of university professors and others who describe themselves as “united by our commitment to academic freedom, disinterested scholarship, and excellence in American higher education.” I joined NAS because they publish a quarterly journal with articles on a wide range of topics, and I am interested in reading a wide variety of viewpoints.

- b. At the time you first joined the organization in 1995, were you aware of the organization’s views on established and mainstream climate science?

RESPONSE: I do not recall, but that is not why I became a member. In any event, I do not believe that joining a group or subscribing to a publication requires that one agree with all of the organization’s positions on a range of issues.

- c. At the time you re-joined the organization in 2012, were you aware of the organization’s views on established and mainstream climate science?

RESPONSE: I do not recall, but again, that is not why I am a member. NAS is a reputable group of university scholars and I appreciate having access to their publications and their focus on liberal arts education.

15. At your hearing, you acknowledged that the Trump administration has proposed to have a “time out, or a flattening” of fuel-economy standards after 2020. Numerous media reports have noted that the administration’s proposal on the CAFÉ standards contained mathematical errors and faulty assumptions. As the *Los Angeles Times* reported, “Findings published in the journal *Science* describe the Trump administration’s cost-benefit analysis as marred by mistakes and miscalculations, based on cherry-picked data and faulty assumptions and skewed in its conclusions. The analysis ‘has fundamental flaws and inconsistencies, is at odds with basic economic theory and empirical studies, [and] is misleading,’ the researchers wrote.” (Tony Barboza, *Trump Fuel Economy Rollback is Based on Misleading and Shoddy Calculations, Study Finds* (Dec. 6, 2018)) Do you believe that fuel efficiency necessarily has an impact on safety? If so, on what basis?

RESPONSE: NHTSA and EPA published this proposed rulemaking at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). The rationale and supporting materials are available in that notice and the associated docket. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs.

16. Calendars of your schedule at the Department of Transportation were released through a Freedom of Information Act request. They appear to indicate that you had several meetings with political activists or consultants. For example, in May of 2017 you appear to have met with Republican pollster Frank Luntz. Over the course 2017, your calendar appears to indicate that you had four meetings with Steven Law, the President of American Crossroads and Crossroads GPS.

- a. What was the agenda for the meetings with Steven Law and what was discussed?

RESPONSE: Mr. Law was previously the Deputy Secretary of Labor during the period 2003-2007. I met with him to enable me to learn from his management experiences at a relevant domestic Cabinet department.

- b. What was the agenda for the meeting with Frank Luntz and what was discussed?

RESPONSE: My recollection is that Mr. Luntz made a group presentation to which I was invited, and that the policy topic was upgrading America’s infrastructure.

- c. Given these meetings, your role on the 2012 GOP Platform Committee, and your significant donations to Republican candidates over the years, would you commit to recusing yourself from any law enforcement or DOJ activities related to elections and/or voting rights?

RESPONSE: I am not currently aware of a basis to conclude that a recusal is required with regard to this topic. However, as with all matters, 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

17. If confirmed, will you commit to timely responding to minority requests — and not just requests from a Chair or members of the majority?

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

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

RESPONSE: The Executive Branch engages in good-faith negotiation with congressional committees in an effort to accommodate legitimate oversight needs, while safeguarding the legitimate confidentiality interests of the Executive Branch. This accommodation process has historically been the primary means for successfully resolving conflicts between the branches and has eliminated the need for an executive privilege assertion in most cases. If I am confirmed, and an assertion of executive privilege is being considered, I anticipate that the Department generally will review its established process and precedents in the course of rendering any decisions.

19. Then-Attorney General Sessions appeared before this Committee for an oversight hearing on October 18, 2017. The Committee still has not received responses to Questions for the Record submitted to Mr. Sessions. If confirmed, do you commit to ensuring that the Justice Department finally responds to those QFRs in full and without further delay?

RESPONSE: I agree that it is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to accommodate the Committee's information and oversight needs, including the submission of answers to written questions, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will work with the relevant Department components, including the Office of Legislative Affairs, to see that the Committee's requests receive an appropriate response.

20. Career Justice Department employees are the lifeblood of the agency. They play a critical role in its daily functions and serve as a repository of institutional knowledge that is crucial to maintaining consistency and even-handed, nonpartisan application of the law throughout administrations. If confirmed, how would you treat a career Justice Department employee who expressed disagreement with a proposed Department action?

RESPONSE: I have the utmost respect for career employees of the Department of Justice. In any large organization, disagreements can occur. A career employee who expressed internal disagreement with a proposed course of action would be taken seriously and his or her opinion would be treated with respect. At the same time, I would expect all employees to respect and adhere to the Department's rules and procedures.

21. The Supreme Court has unanimously ruled that a President can be required to turn over information relevant to an ongoing investigation. It upheld the subpoena for the tapes of Oval Office conversations that revealed President Nixon's efforts to cover up the Watergate break-in. This case was *U.S. v. Nixon*.

- a. Was *U.S. v. Nixon* correctly decided?

RESPONSE: My understanding is that the Department of Justice has viewed *United States v. Nixon* as a longstanding Supreme Court precedent.

- b. Can a sitting President be required to respond to a subpoena?

RESPONSE: This is a hypothetical question, and my analysis would depend on the underlying facts and circumstances. While my analysis would be guided by existing Supreme Court precedents, such as *United States v. Nixon* and *Clinton v. Jones*, the question seems conjectural in the absence of an actual factual circumstance.

22. At your hearing, several Senators asked you about Justice Department policies governing contacts between the White House and the Department regarding ongoing investigations. If confirmed, do you commit to enforcing these policies and ensuring that both the Justice Department and the White House know the rules?

RESPONSE: The Department has policies in place that govern communications between the White House and the Department, which are known at both places. Consistent with the 2009 Holder Memo, initial communications between the Department of Justice and the White House concerning investigations or cases should involve only the Attorney General, the Deputy Attorney General, or the Associate Attorney General. The purpose of these procedures is to prevent inappropriate external political influence on Department of Justice matters. If I am

confirmed, I would plan to act in accordance with applicable Department of Justice protocols, including the 2009 Memo on communications with the White House issued by former Attorney General Holder.

23. Officials from the Justice Department's Civil Rights Division have yet to appear before this Committee for an oversight hearing. If confirmed, will you commit to ensuring that the Civil Rights Division comes before this Committee for an oversight hearing?

RESPONSE: I understand that the Department works to accommodate the Committee's information and oversight needs, including providing witnesses when requested by the Chairman of the Committee or a subcommittee, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will work with the relevant Department components, including the Office of Legislative Affairs, to see that the Committee's requests receive an appropriate response.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR LEAHY

1. In 2008, a Bush administration official said that you, as General Counsel for the Office of Management and Budget, were one of the “primary opponents” of the Bush administration taking any action on climate change. There are also reports indicating that as OMB’s General Counsel, you had repeatedly asked whether CO2 from automobiles could be viewed and treated differently than CO2 from power plants – even though, as a former EPA official said he explained to you on multiple occasions, “there is no scientific way of differentiate between CO2 from a car or a power plant.” That former EPA official viewed repeatedly having to explain this irrefutable fact as “embarrassing.” If confirmed as Deputy Attorney General you will oversee, among other units, the Environment and Natural Resources Division.

- a. Do you agree that government policies and practices should be informed by scientific evidence?

RESPONSE: Please see my responses to Questions 7 and 12 from Ranking Member Feinstein.

- b. Do you disagree with the overwhelming majority of scientists who assert that climate change is an irrefutable reality that has been caused by human activity? If so, on what basis?

RESPONSE: Please see my responses to Questions 7 and 12 from Ranking Member Feinstein.

- c. Are there any scenarios in which companies should be held liable for any contributions they make to climate change?

RESPONSE: There is presently active litigation in several federal courts in cases in which plaintiffs are arguing for this type of liability. Because they are pending cases, I am not prepared at this time to express a view.

2. The Deputy Attorney General oversees a massive number of prosecutors and agents involved in criminal investigations. Yet you have no criminal law experience – neither as a prosecutor nor as a defense lawyer. And you have never worked at the Justice Department in any capacity. This position has always been filled, with perhaps a single exception, by someone with significant criminal law and Justice Department experience.

- a. What experiences can you point to that should give Congress confidence you would, if confirmed, effectively manage and guide tens of thousands of criminal prosecutors and agents and add value to the Department's decision process on difficult criminal law issues?

RESPONSE: As I discussed at my hearing, in my current position as the Deputy Secretary of Transportation, I serve as the chief operating officer of a federal cabinet department with a budget in excess of \$80 billion and more than 55,000 employees with important responsibilities regarding public safety and infrastructure, among other things. In addition, I had nearly 30 years of litigating complex cases all over the United States during my time at my former law firm, Kirkland & Ellis LLP, and I played a leadership role there as well.

If I am confirmed, I intend to learn from and draw upon the thousands of seasoned and experienced prosecutors at the Department of Justice. I believe my experiences demonstrate that I am qualified and able to manage the size of the Department's operations, and that I will utilize all of my resources, including those prosecutors with institutional knowledge, to decide difficult criminal law issues. Additionally, I was pleased to learn that the Committee received letters of support from more than forty former officials from the Department of Justice, including prosecutors and senior officials, and from several law enforcement organizations, including the Sergeants Benevolent Association, the National Fraternal Order of Police, and the National Association of Police Organizations, Inc.

3. In 2012, you served as chief legal counsel to the Platform Committee of the Republican National Convention. That year, the RNC's Platform took a number of controversial and extreme positions, including arguing for a citizenship question in the decennial census, and a defense of state voter ID laws to protect against "a significant and growing form of voter fraud."
 - a. What role did you play in developing, writing, or in any way shaping the legal and policy positions taken by the RNC's Platform that year? Please provide a detailed response explaining every Platform position you were involved in developing, writing, or shaping in any way.
 - b. What form of "significant and growing" voter fraud was the RNC Platform referring to in its defense of state voter ID laws? Can you please provide copies of any relevant data and statistics regarding voter fraud that the Platform used to craft this policy position?

RESPONSE: Please see my response to Question 11(a) from Ranking Member Feinstein.

4. At your confirmation hearing you said at OMB you were involved in the USA PATRIOT Act reauthorization.

- a. Do you support any reforms or changes to these authorities?

RESPONSE: I am not aware of any specific proposals for reform or changes to the USA PATRIOT Act, but if confirmed as Deputy Attorney General, I would be pleased to consider any such proposals and work with Congress to the extent appropriate.

- b. Do you believe there were any abuses or violations of civil liberties committed by the United States government under the auspices of the USA PATRIOT Act?

RESPONSE: In my current and previous positions in government, I have not been involved in direct oversight of the authorities provided by the USA PATRIOT Act and whether any abuses of such authorities have occurred.

5. On March 14, 2019, I joined Senators Grassley, Cornyn, and Feinstein – all members of the Senate Judiciary Committee, with jurisdiction over the Freedom of Information Act (FOIA) – in a letter to the Justice Department inquiring into the Department’s role and efforts to ensure government-wide compliance with FOIA. We had asked the Department to respond to our letter by April 17, 2019 – today – and yet only received a verbal update – today – that the Department was still in the process of reviewing and responding to our questions. Our letter was in part about the tardiness of agency responses to FOIA requests, so the tardiness of Department’s response to our letter only underscores our concerns.

- a. What will you do as Deputy Attorney General to ensure the timeliness of responses to requests for information from Congress – which is constitutionally situated as the overseer of the Department – especially when they come from Members on committees of relevant jurisdiction?

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

- b. Will you commit, if confirmed, to ensuring the Justice Department responds to oversight requests of all members of Congress, regardless of whether they serve in the majority or minority or serve as a chairman of a committee?

RESPONSE: Please see my response to Question 5(a) above.

- c. Do you believe that Congressional oversight is an important means for creating accountability in all branches of government?

RESPONSE: When conducted properly, it can be.

- 6. Does the First Amendment allow the use of a religious litmus test for entry into the United States? How did the drafters of the First Amendment view religious litmus tests?

RESPONSE: As I said at my hearing, “the First Amendment is absolutely indispensable to a free society.” Article VI of the United States Constitution states that “no religious test shall ever be required as a qualification to any office or public trust under the United States.” I have not studied the issue as it relates to entry into the United States for citizens of other countries.

- 7. Do you agree with Justice Scalia’s characterization of the Voting Rights Act as a “perpetuation of racial entitlement?”

RESPONSE: I am not familiar with Justice Scalia’s characterization. If confirmed, I am committed to enforcing all federal civil rights law, including the Voting Rights Act.

- 8. How will you ensure, if confirmed, that the First Step Act is fully implemented?

RESPONSE: As I stated during my hearing, I am committed to the enforcement of federal laws, including the First Step Act. If confirmed, I will work with relevant Department components to ensure the Department implements the Act.

- 9. What are your thoughts on the need for further criminal justice reform? Do you believe additional legislative reforms are necessary?

RESPONSE: As I noted at my hearing, I am committed to implementing the First Step Act and its goal of giving Americans convicted of certain offenses another chance at a productive life. I also noted that, if confirmed, I look forward to learning more about ways to facilitate the reentry of incarcerated individuals, including programming efforts related to job training and prisoner addiction.

- 10. What are your views on bias within law enforcement, implicit or otherwise? What role should the Justice Department play to address any bias within law enforcement?

RESPONSE: I have always supported the equal protection of the laws for all Americans. I am committed to the enforcement of federal laws and applicable regulations consistent with the Constitution. Unbiased law enforcement practices strengthen trust in law enforcement and foster collaborative efforts between law enforcement and communities to fight crime and ensure public safety. If confirmed, I will work to ensure that the Department's resources are aligned to most effectively protect the public.

11. What is your strategy, if confirmed, to increase hate crimes reporting to the FBI? What steps would you take, for example, to ensure that all federal agencies fully report hate crime statistics as provided by the Hate Crime Statistics Act of 1990 and the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act?

RESPONSE: Accurate reporting of data regarding crime is vital to law enforcement. I understand from publicly available information that the Department has recently launched a new website and held a roundtable discussion with state and local law enforcement leaders aimed at improving the identification and reporting of hate crimes. If confirmed, I look forward to working with state and local law enforcement and to improving the reporting of crimes, including hate crimes.

12. What role should the Justice Department play in supporting state and local law enforcement's efforts to reduce opioid trafficking and use? What is your view of the COPS Anti-Heroin Task Force (AHTF) program? Congress appropriated approximately \$32 million for AHTF in FY 2019. Do you support additional levels of funding for FY 2020?

RESPONSE: State and local law enforcement collaboration and support is vital to the Department's response to the opioid epidemic. The response to the opioid epidemic requires a seamless partnership between law enforcement and public health and safety professionals. Collaborative work among law enforcement and public health cannot only improve the outcome of investigations, but also help bridge the gap between overdose and treatment. Although I am not currently at the Department, it is my understanding that the Department is not seeking funds for the COPS Anti-Heroin Task Forces. Instead, the FY 2020 budget continues the Administration's emphasis on federal programs, but the Department will continue to support state and local task forces with funding provided through its law enforcement bureaus.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR DURBIN

1. If you are confirmed, what elements of the First Step Act would you prioritize for implementation?

RESPONSE: If confirmed, I will work with relevant Department components to ensure the Department implements the First Step Act and to determine the best approach to implementing the Act.

2. What is your view of the Justice Department’s current charging policy? Do you think any changes are needed to the policy?

RESPONSE: It is my understanding that the Department’s current charging policy is designed to improve consistency but allows prosecutors a means to deviate from the general requirement of charging the “most serious, readily provable offense” in cases where the prosecutor believes it is in the interest of justice to do so.

3. What is your understanding of the Justice Department’s “zero tolerance” policy?

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

4. The federal government has lost track of parents who were removed from the U.S. after being separated from their children because of the zero-tolerance policy. Does the Trump Administration bear any responsibility to find these lost parents?

RESPONSE: Please see my response to Question 3 above.

5. Attorney General Sessions initiated the zero tolerance policy and directed DOJ to coordinate with DHS to ensure all illegal-entry cases were referred to DOJ for prosecution. Do you acknowledge any Justice Department responsibility for the family separation debacle that resulted?

RESPONSE: Without having additional information beyond what has been reported in the news media, I am not in a position to comment on this statement. 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.

6. What are your top priorities for EOIR if you are confirmed?

RESPONSE: I understand generally that EOIR faces a backlog of pending immigration court cases and that it has taken significant steps in the past two years to address that backlog. If confirmed, I look forward to learning more about EOIR's processes and ensuring that it continues to adjudicate cases efficiently consistent with the law.

7. What is your understanding of the process for hiring immigration judges?

RESPONSE: I am not familiar with all of the details of the process, but I understand generally that the process is an open and merit-based one involving multiple levels of review and interviews culminating in an appointment by the Attorney General in accordance with the law. If confirmed, I look forward to learning more about the process.

8. Will you commit that, if you are confirmed, any immigration judges selected will be chosen solely on the basis of merit and will include qualified candidates from the nonprofit and private sectors?

RESPONSE: If confirmed, I will work to ensure that the Department selects immigration judges based on applicable law.

9. Are you aware that whistleblowers have made allegations of politicized hiring practices for immigration judges and Board of Immigration Appeals members under Attorney General Sessions? According to these whistleblower accounts, DOJ improperly withheld or rescinded offers for these positions based on the perception that candidates hold political or ideological views that do not align with those of the Trump Administration. Was this proper, in your view?

RESPONSE: I am generally aware from media accounts of both the allegations and the Department's emphatic refutation of those allegations. If confirmed, I will work to ensure that the Department complies with applicable law in the hiring of all employees.

10. What is your understanding of the Deputy Attorney General's role in overseeing BOP?

RESPONSE: As I am not currently at the Department, I cannot comment in detail about the Deputy Attorney General's role in the oversight of the Bureau of Prisons but I know that the Director of the Bureau reports directly to the Deputy Attorney General and I would work closely with the Director and other Bureau leadership to advance the Bureau's mission. If confirmed, I look forward to working with this important agency.

11. If confirmed, what will be your top priorities for BOP?

RESPONSE: If I am confirmed, I would work with the Director of the Bureau of Prisons to achieve the protection of public safety, in part by targeting reduced recidivism among released offenders through full implementation of the First Step Act, and to support the work of the personnel at the Bureau's facilities who are essential to keeping our communities safe and these institutions secure and humane.

12. What is your understanding of the staffing situation at BOP?

RESPONSE: As I am not currently at the Department, I am not familiar with the details of staffing at the Bureau of Prisons. It is my general understanding that all staff working in an institution are considered correctional workers first and expected to supervise inmates. If confirmed, I look forward to reviewing the Bureau's resource allocation, staffing needs, and practices.

13. On April 10, in testimony before the Senate Appropriations Committee, Attorney General Barr said "I lifted yesterday" the BOP hiring freeze that had been in place since 2017. Is it accurate that the hiring freeze was not lifted until April 9, 2019?

RESPONSE: Because I am not currently at the Department, I am not familiar with the current hiring practices or restrictions. If confirmed, I will work to see that all Department components – including the Bureau of Prisons – are appropriately staffed and resourced.

14. If confirmed, what will you do to address BOP staffing shortfalls?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more about the Bureau's staffing situation.

15. When I asked you about voting rights in our meeting before your hearing, you said that voting rights are the base of our pyramid of freedom. Are you concerned that under the Trump Administration, DOJ has not brought a single Section 2 case under the Voting Rights Act?

RESPONSE: If confirmed, I will be committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any recommendations

regarding whether to bring Section 2 enforcement actions will be based on a thorough analysis of the facts and the governing law.

16. President Trump claimed, without evidence, that 3-5 million people illegally voted in the 2016 election. Do you agree with his claim? Are you aware of any evidence that supports it?

RESPONSE: I have not had occasion to study this issue. Therefore, I have no basis for reaching a conclusion on this issue.

17. Are you aware of any examples of voter suppression in the 2018 election?

RESPONSE: I have not had occasion to study this issue. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

18. What will you do if the President or the Attorney General ask you to do something that you believe is illegal?

RESPONSE: I think this hypothetical scenario is unlikely to occur. However, if the President or any other official asks me to follow a directive that I believe is contrary to the Constitution or laws of the United States, I would seek to persuade the President or Attorney General of my views or to defer to my judgment. If I were nonetheless directed to do something illegal, I would resign rather than carry out an illegal order.

19. What will you do if the President or the Attorney General asks you to defend a statement or tweet that you know to be false?

RESPONSE: As I said at my hearing, “I have a long, professional track record that I’m proud of—of integrity, of ethics of professionalism and that’s not going to change. I am going to do the right thing in accordance with the law and the rules, the ethical requirements at every juncture.”

20. What is the obligation of the Deputy Attorney General when the President shows contempt for the federal judiciary and the rule of law? Does the Deputy Attorney General have an obligation to defend the integrity of the judiciary and commit to abide by its rulings?

RESPONSE: As I said during my hearing, if confirmed, “one of my overarching objectives is for the Department of Justice to be understood and perceived as promoting the rule of law.” I am committed to the rule of law and if confirmed will promote the rule of law at the Department of Justice.

21. You were confirmed to be the Deputy Secretary of Transportation on May 16, 2017. On June 5, 2017, President Trump announced his intent to nominate Steven Bradbury to be

General Counsel at the Department of Transportation. Mr. Bradbury was a longtime partner at Kirkland & Ellis, your old law firm, and he also headed the DOJ Office of Legal Counsel from 2005-2009. Mr. Bradbury was confirmed in November 2017.

- a. Did you play any role in recommending Mr. Bradbury to serve as General Counsel to the Department of Transportation?

RESPONSE: Mr. Bradbury was nominated by President Trump on June 6, 2017. After a hearing on June 28, 2017, he was confirmed by the United States Senate on November 14, 2017. I would defer to the White House on any questions about Mr. Bradbury's selection or nomination.

- b. Did you work with Mr. Bradbury on any matters at Kirkland & Ellis? If so, please describe each such matter.

RESPONSE: I do not recall working on specific cases with Mr. Bradbury, but he was at Kirkland & Ellis from the time he finished his Supreme Court clerkship in 1993 until he left to join the Department of Justice in 2004, and I knew him during those years.

- c. What matters did you and Mr. Bradbury work on together at the Department of Transportation? Please describe each such matter.

RESPONSE: At DOT, Mr. Bradbury is the General Counsel, and I am the Deputy Secretary. I work with and oversee all of the department's officers and the heads of its operating administrations, including the General Counsel.

- d. On June 28, 2017, Senator John McCain sent a letter expressing his strong objection to consideration of Mr. Bradbury's nomination. Senator McCain wrote: "while serving as the acting head of the Department of Justice's Office of Legal Counsel from 2005 to 2009, Mr. Bradbury authored several legal memoranda that authorized the use of waterboarding and other forms of torture and degrading treatment. I find his nomination to any position of trust in our government to be personally offensive." Were you aware of Senator McCain's opposition to Mr. Bradbury's nomination, and if so, what was your reaction to Senator McCain's opposition?

RESPONSE: I respect the Senate's role under Article II, section 2 of the U.S. Constitution to provide its "advice and consent" with regard to Presidential nominees.

- e. Is waterboarding torture?

RESPONSE: Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of waterboarding on any person in U.S. custody. That statute clarifies that no individual in U.S. custody may be subjected to any interrogation technique that is not authorized or listed in the Army Field Manual, and it prohibits the Army Field Manual from including techniques involving the use or threat of force.

- f. Is waterboarding illegal under U.S. law?

RESPONSE: Please see my response to Question 21(e) above.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR WHITEHOUSE

1. *The New York Times* reported that you were a chief author of the Safer Affordable Fuel-Efficient Vehicles Rule (“SAFE”), “President Trump’s plan to roll back a major environmental rule and let cars emit more tailpipe pollution.” The Times reported that your plan “not only would permit more planet-warming pollution from cars, it would also challenge the right of California and other states to set their own, more restrictive state-level pollution standards.”¹
 - a. As Deputy Secretary of Transportation, did you author – in full or in part – SAFE?

RESPONSE: As Deputy Secretary of Transportation, my overall role has been to serve as the Department’s Chief Operating Officer and assist the Secretary in carrying out her duties in overseeing the Department’s Operating Administrations and more than 50,000 employees. The proposed SAFE Vehicles Rule was jointly published by DOT’s NHTSA and the EPA on August 24, 2018. It was not my role to draft the proposed rule, and I did not do so. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs.

- b. Does SAFE let cars emit more greenhouse gas pollution?

RESPONSE: The proposed SAFE Vehicles Rule was jointly published by DOT’s NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs.

- c. Does SAFE challenge the right of states to set their own more restrictive state-level pollution standards?

¹ <https://www.nytimes.com/2018/07/27/climate/trump-auto-pollution-rollback.html>

RESPONSE: Please see my response to Question 6(a) from Ranking Member Feinstein.

2. According to the *New York Times* and statements made at your confirmation hearing, you argued that fuel-efficient cars are less safe because they are lighter. According to the Times, “Mr. Rosen and Ms. King have also justified their proposal [SAFE] with a new analysis concluding that the stricter Obama-era pollution rules would lead to thousands of deaths in road accidents. They argue that more fuel-efficient cars are less safe because they are lighter.” It was also reported that “Mr. Wheeler has sharply questioned the auto fatality numbers”²
 - a. Did you justify SAFE with analysis about auto fatalities? Please specify the type of analysis done and the results of the analysis.

RESPONSE: While I did not personally conduct any such analysis, the NPRM for the SAFE Vehicles Rule issued jointly by NHTSA and EPA in August 2018 at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018) details the agencies’ preliminary analysis on the connections between fuel economy of motor vehicles and safety. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs.

- b. What scientific evidence did you rely on when you make the determination that fuel-efficient cars are less safe because they are lighter? Please specify.

RESPONSE: Please see my response to Question 2(a) above.

- c. Did the employees who were involved in analyzing the relationship between automobile weight and auto fatalities have experience with analyzing auto fatality numbers or have advanced degrees in statistics, econometrics or a related discipline?

RESPONSE: Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs.

² *Id.*

- d. What role did you have in determining the auto fatality numbers? Please specify.

RESPONSE: Any details about this rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- e. What direction did you provide to employees charged with analyzing the relationship between automobile weight and auto fatalities or automobile safety? Please specify.

RESPONSE: Please see my response to Question 2(d) above.

- f. Did acting administrator Wheeler ever express any doubts that the auto fatality numbers were accurate?

RESPONSE: Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- g. Did acting administrator Wheeler ever express any doubts that the auto fatality numbers would withstand review by a federal court?

RESPONSE: Please see my response to Question 2(d) above.

- h. Did any other EPA, DOT, or White House official express doubts that the auto fatality numbers were accurate?

RESPONSE: Please see my response to Question 2(d) above.

- i. Did any other EPA, DOT, or White House official express doubts that the auto fatality numbers would withstand review by a federal court?

RESPONSE: Please see my response to Question 2(d) above.

- j. You mentioned in response to my questioning at your confirmation hearing that some of the sources I cited were "fake news." Is this New York Times report "fake news"? Please specify which claims are false and provide specific evidence.

RESPONSE: The online-only New York Times article dated July 27, 2018, contains a number of factual errors and unsupported opinions. The article purports to cover deliberations on an ongoing rulemaking, so I am not in a position to discuss those deliberations. However, contrary to assertions in the article, during the years I served as General Counsel of DOT, NHTSA issued a fuel economy rule (covering model years 2008-11 for light truck and passenger vehicles), which is available at 71 Fed. Reg. 17566 (April 6, 2006).

3. Do you have any formal training in statistical or econometric modeling? Please specify.

RESPONSE: I majored in economics in college and also studied statistics. However, I have not performed statistical or econometric modeling in my role as Deputy Secretary of DOT.

4. According to the *Washington Post*, “In 2016, the EPA estimated that complying with the tighter tailpipe standards would cost roughly \$900 per car by 2025, with NHTSA putting the figure at \$1,200. Two years later, Trump officials argue that keeping the Obama-era standards could raise costs by more than \$2,300 per vehicle.”³ The questions below refer to these calculations.

- a. In your view, how much would the higher standards on tailpipe emissions implemented by the Obama Administration cost per vehicle?

RESPONSE: The NPRM for the SAFE Vehicles Rule issued jointly by NHTSA and EPA in August 2018 at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018) explains in detail the basis for cost estimates. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs.

- b. Please specify the methodology used to establish that number and the reasons why you believe that number is correct.

RESPONSE: Please see my response to Question 4(a) above.

- c. Please specify the differences in methodology which lead to the changes in estimates between 2016 and 2018.

³ https://www.washingtonpost.com/national/health-science/2018/08/01/90c818ac-9125-11e8-8322-b5482bf5e0f5_story.html?utm_term=.3d63634fcde2

RESPONSE: Please see my response to Question 4(a) above.

- d. What was your involvement in calculating these cost estimates? Please specify.

RESPONSE: Please see my response to Question 4(a) above.

- e. Did you ever direct employees from the DOT or EPA to modify their calculations or the assumptions underlying those calculations? Please specify.

RESPONSE: The NPRM for the SAFE Vehicles Rule issued jointly by NHTSA and EPA in August 2018 is available at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- f. Did you discuss these calculations with employees from DOT and/or EPA? Please specify the content of those conversations.

RESPONSE: The NPRM for the SAFE Vehicles Rule issued jointly by NHTSA and EPA in August 2018 is available at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- g. Did you discuss these calculations with the White House? Please specify the content of those conversations.

RESPONSE: Executive Order 12866 (1993) requires that regulatory agencies submit rigorous analysis of costs and benefits to the Office of Management and Budget for interagency review. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- h. Did you discuss these calculations with people outside the federal government? Please specify the contents of those conversations.

RESPONSE: The analysis contained in the NPRM has been available for public review and comment since August 2018. Any details about the rulemaking relate to oversight of the Department of Transportation, and not

to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

5. *The Atlantic* has reported there were mistakes in the calculations cited as justification for freezing fuel economy standards under SAFE. The Atlantic reported that, “[i]n some cases, the mistakes are so large—and so central to the rule’s legal justification—that remedying them may destabilize the entire argument for the proposal.”⁴

- a. What was your involvement in the calculations that were used as justification for SAFE? Please specify.

RESPONSE: I am previously unaware of the article you reference. The proposed SAFE Vehicles Rule was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. Were you aware of any mistakes in the calculations? Please specify.

RESPONSE: The notice of proposed rulemaking and associated supporting document provide detailed descriptions of the calculations performed by NHTSA and EPA during development of the proposed rule. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- c. Why do you think the agency made so many mistakes when performing these analyses?

RESPONSE: Please see my response to Question 5(a) above.

- d. Do you believe it is the responsibility of agency leadership when mistakes are included in public filings?

⁴ <https://www.theatlantic.com/science/archive/2018/10/trumps-clean-car-rollback-is-riddled-with-math-errors-clouding-its-legal-future/574249/>

RESPONSE: The proposed SAFE Vehicles Rule was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- e. You mentioned in response to my questioning at your confirmation hearing that some of the sources I cited were “fake news” Is this *Atlantic* report “fake news”?

RESPONSE: I have not studied the article you reference and am not in a position to comment further about it.

- 6. In their public comment on your proposal to gut CAFE standards by implementing SAFE, Honda Motors noted a critical error in your scrappage model. A scrappage model is used to simulate the American car market. Honda wrote, “A key element in the scrappage model is vehicle miles traveled (VMT)... In the case of higher stringency and more expensive new cars, the scrappage model should shift VMT from new cars to older cars. However, data from published model outputs includes an unexplained *increase* in VMT. This appears to be an accounting error that requires correction...this phantom VMT (either disappearing in one scenario or appearing in another, depending on the point of reference) is troubling. We believe it is an artifact of a *new, insufficiently matured model that needs further refinement and validation*. We urge the agencies to investigate the phantom VMT phenomenon and correct the model accordingly.” Honda concluded, “We believe that correcting this error in the scrappage model specifications will dramatically lower the agencies’ estimates of scrappage-related theoretical fatalities.”⁵

- a. Why did Honda write that the model was “insufficiently matured”?

RESPONSE: The proposed SAFE Vehicles Rule was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. Are you aware of the phantom VMT problem in the scrappage model?

⁵ https://hondainamerica.com/wp-content/uploads/NHTSA-2018-0067_EPA-HQ-OAR-2018-0283-Honda-Comment.pdf

RESPONSE: The proposed SAFE Vehicles Rule was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- c. Please describe how VMT was calculated in the scrappage model.

RESPONSE: Please see my response to Question 6(b) above.

- d. Please describe the problem of phantom VMT and how it skews the estimates of fatalities.

RESPONSE: Please see my response to Question 6(b) above.

- e. Did you direct employees from the DOT or EPA to modify their calculations or the assumptions underlying those calculations in order to achieve a certain result?

RESPONSE: No. The proposed SAFE Vehicles Rule was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- f. In light of Honda's comment, do you believe the fatality numbers used to justify SAFE are accurate?

RESPONSE: Please see my responses to Questions 6(a) and 6(b) above.

- g. After Honda published its comment, how did the DOT respond? Please specify.

RESPONSE: Please see my responses to Questions 6(a) and 6(b) above.

- h. Please specify the procedures you implemented at DOT to ensure that all DOT work product is accurate.

RESPONSE: Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the

Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

7. In a *Washington Post* article⁶ discussing SAFE, Bill Charmley, the Director of the Assessment and Standards division of the EPA's Office of Transportation and Air Quality, is quoted saying "EPA's technical issues have not been addressed, and the analysis performed ... does not represent what EPA considers to be the best, or the most up-to-date, information available to EPA." The same article states: "EPA experts also called 'indefensible' some aspects of a program the transportation agency used and said they had corrected 'erroneous and otherwise problematic elements of the model's logic and algorithms.'" It also states that "EPA's internal analysis suggested...that freezing the Obama-era rules would lead to slightly more fatalities (seven for every trillion miles driven), cost jobs, and in economic terms, have a net negative impact of \$83 billion."

- a. Were you aware of any technical issues raised by EPA that DOT failed to address in its analysis?

RESPONSE: NHTSA and EPA staff were responsible for the technical analysis supporting the various options in the NPRM. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. Were you aware of concerns raised by Mr. Charmley or others about the quality of the information incorporated into DOT analysis?

RESPONSE: Please see my response to Question 7(a) above.

- c. Did EPA's internal analysis differ from that of DOT?

RESPONSE: My understanding is that EPA and NHTSA jointly published the NPRM, which is available at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

⁶ https://www.washingtonpost.com/energy-environment/2018/08/15/trump-administration-said-weaker-fuel-standards-would-save-lives-epa-experts-disagree/?utm_term=.4e375e3e3223

- d. What were the reasons for this difference?

RESPONSE: Please see my response to Question 7(c) above.

8. SAFE proposes to revoke California's Clean Air Act waiver to enforce its own vehicle greenhouse gas emissions and zero-emissions vehicle standards, providing that "States may not adopt or enforce tailpipe greenhouse gas emissions standards when such standards relate to fuel economy standards and are therefore preempted under EPCA, regardless of whether EPA granted any waivers under the Clean Air Act (CAA).... NHTSA and EPA agree that state tailpipe greenhouse gas emissions standards do not become Federal standards and qualify as "other motor vehicle standards of the Government," when subject to a CAA preemption waiver. EPCA's legislative history supports this position." You also said, in response to Senator Booker at your March 29, 2017 confirmation hearing for your current role, that "I have said many times I have a somewhat simple view that if Congress has written a law, then administrative agencies should implement the law." With that in mind, please answer the following questions:

On October 25, 2018, Senator Carper sent a letter⁷ to then-Acting EPA Administrator Wheeler and DOT Secretary Chao. The following questions refer to that letter as well as the documents appended to it.

- a. Do you agree that on Tuesday November 20, 2007 at 4:38 PM, a representative of Patton Boggs (which at the time represented Cerberus, which had purchased Chrysler) shared draft legislative language with staff for then-Representative Markey (the lead House proponent of the fuel economy provisions that were enacted as part of the Energy Independence and Security Act of 2007) that sought to change EPA's authority to "promulgate regulations applicable to emissions of greenhouse gases from automobiles"? If not, why not?

RESPONSE: Any details about the rulemaking and DOT's response to Senator Carper relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. Do you agree that this November 20, 2007 draft legislative language also would have limited state authority, stating "a State or a political subdivision of a State may prescribe requirements for greenhouse gas emissions for automobiles obtained for its own use"? If not, why not?

⁷ <https://www.carper.senate.gov/public/index.cfm/2018/10/carper-leads-democrats-to-warn-trump-administration-of-legal-vulnerabilities-in-proposal-to-block-california-from-setting-its-own-clean-car-standards>

RESPONSE: Please see my response to Question 8(a) above.

- c. Do you agree that on December 6, 2007, a Statement of Administration Policy was issued by the Executive Office of the President on H.R. 6, the Energy Independence and Security Act of 2007, that this Statement said that the President's senior advisors would recommend a Presidential veto of the bill if it remained in its current form, and that this Statement listed as among the reasons for that recommendation the fact that the bill "leaves ambiguous the role of the Environmental Protection Agency (EPA) in regulating fuel economy," saying that "the bill needs to clarify one agency as the sole entity, after consultation with other affected agencies, to be responsible for a single national regulatory standard for both fuel economy and tailpipe greenhouse gas emissions from vehicles"? If not, why not?

RESPONSE: Please see my response to Question 8(a) above.

- d. Do you agree that on, December 13, 2007, another Statement of Administration Policy was issued by the Executive Office of the President on H.R. 6, the Energy Independence and Security Act of 2007, that this Statement said that the President's senior advisors would recommend a Presidential veto of the bill if it remained in its current form, and that the Statement listed as among the reasons for that recommendation the need for the bill to "clarify, however, that DOT should establish this single national regulatory standard, in consultation with the Environmental Protection Agency, and that neither agency should add additional layers of regulation"? If not, why not?

RESPONSE: Please see my response to Question 8(a) above.

- e. Do you agree that the Energy Independence and Security Act of 2007 was voted on by both the House and the Senate and was subsequently signed into law on December 19, 2007, without including language like that suggested by Cerberus that limited state authority to prescribe requirements for greenhouse gas emissions for automobiles, or provisions that addressed language in two Presidential veto threats calling for a single federal regulator for regulating fuel economy? If not, why not?

RESPONSE: I recall that President Bush signed the Energy Independence and Security Act of 2007, and that the Act did not alter the existing text of 49 U.S.C. § 32919, which addresses preemption of state fuel economy standards.

- f. Do you agree that Congress was presented with legislative options that would have limited both EPA and California's Clean Air Act authority to promulgate and enforce vehicle greenhouse gas emissions standards, and chose not to enact

any such provisions in the Energy Independence and Security Act, even when faced with two Presidential veto threats? If not, why not?

RESPONSE: I recall that President Bush signed the Energy Independence and Security Act of 2007, and that the Act did not alter the existing text of 49 U.S.C. § 32919, which addresses preemption of state fuel economy standards.

9. On October 26, 2018, Mr. Greg Dotson, Assistant Professor of Law at the University of Oregon School of Law, submitted comments⁸ to the docket for the Safer Affordable Fuel-Efficient Vehicles Rule. The following questions refer to materials described in that submission.
 - a. Do you agree that in 2010, after the Obama Administration made its determination under the Clean Air Act that greenhouse gas emissions from motor vehicles endangers health and welfare (and after granting California its waiver to enforce its own vehicle greenhouse gas emissions standards), Senator Murkowski authored a Resolution to disapprove the so-called ‘endangerment finding’ under the Congressional Review Act, stating that “The EPA does not need to take over this process, and it should not be allowed to do so under a law that was never intended to regulate fuel economy....The best way to avoid a messy patchwork would be to pass our disapproval resolution, revoke California’s waiver, and allow one Federal agency to set one standard that works for all 50 States,” that the Murkowski resolution was defeated by the United States Senate, and that at no time during the debate did anyone suggest that the Energy Independence and Security Act had revoked EPA’s (and/or California’s) Clean Air Act authority to regulate vehicle greenhouse gas emissions, or that EPA and California had no such authority in the first place? If not, why not?

RESPONSE: It is my understanding that EPA and NHTSA have received more than 600,000 individual comments. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs. With regard to the one aspect that might fall within the role of the Department of Justice, I am aware that the Congressional Review Act at 5 U.S.C. §801(g) provides: “If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.”

⁸ https://law.uoregon.edu/images/uploads/entries/SAFE_Comments_Dotson.pdf

- b. Do you agree that in 2011, Congressional Republicans authored the Energy Tax Prevention Act, which would have created a new section 330 of the Clean Air Act which stated that “The Administrator may not, under this Act, promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change,” prevented the adoption of the model years 2012-16 vehicle greenhouse gas standards, and modified section 209 of the Clean Air Act to prohibit the EPA Administrator from granting a waiver from preemption to California to allow it to enforce its own vehicle greenhouse gas emissions standards for model year 2017 and beyond, saying that “(A) the Administrator may not waive application of subsection (a); and “(B) no waiver granted prior to the date of enactment of this paragraph may be construed to waive the application of subsection (a)””? If not why not?

RESPONSE: It is my understanding that EPA and NHTSA have received more than 600,000 individual comments. The proposed SAFE Vehicles Rule was jointly published by DOT’s NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs.

- c. Do you agree that the accompanying report on the Energy Tax Prevention Act stated that “Proponents of EPA’s agenda have stated that the Supreme Court’s decision should be the last word, but this is incorrect. The Supreme Court did not mandate that the EPA make an endangerment finding and indeed no administration whether Democrat or Republican has ever made such an unprecedented finding. While it is the role of the Supreme Court to interpret existing legislation such as the CAA, Congress is free to amend or clarify that legislation if it believes the Supreme Court concluded wrongly or that circumstances necessitate a change in the law. Indeed, the current Congress would be remiss if it ignored the deleterious impact of EPA’s regulatory agenda in favor of a highly controversial 5 to 4 Supreme Court decision and its interpretation of Congressional intent when the CAA which was enacted--decades before global warming emerged as an issue”? If not, why not?

RESPONSE: Please see my response to Question 9(b) above.

- d. Do you agree that the Energy Tax Prevention Act was rejected by the United States Senate and never enacted into law? If not, why not?

RESPONSE: Please see my response to Question 9(b) above.

- e. Do you agree that the Energy Tax Prevention Act, and its accompanying report, both of which were written years after the enactment of the Energy Independence and Security Act, did not assert that the Energy Independence and Security Act had revoked EPA's (and/or California's) Clean Air Act authority to regulate vehicle greenhouse gas emissions, or that EPA and California had no such authority in the first place? If not, why not?

RESPONSE: Please see my response to Question 9(b) above.

10. In light of the repeated, failed, efforts by some to legislatively repeal or limit EPA's (and/or California's) Clean Air Act authority to regulate vehicle greenhouse gas emissions both before and after the enactment of the Energy Independence and Security Act, and your own statement to the United States Senate that "if Congress has written a law, then administrative agencies should implement the law,"⁹ please provide a specific and detailed legal justification for the Department of Transportation's statement in its proposed Safer Affordable Fuel-Efficient Vehicles Rule that "States may not adopt or enforce tailpipe greenhouse gas emissions standards when such standards relate to fuel economy standards and are therefore preempted under EPCA, regardless of whether EPA granted any waivers under the Clean Air Act (CAA)...NHTSA and EPA agree that state tailpipe greenhouse gas emissions standards do not become Federal standards and qualify as "other motor vehicle standards of the Government," when subject to a CAA preemption waiver. EPCA's legislative history supports this position."

RESPONSE: The proposed SAFE Vehicles Rule, which was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018), details the statutory analysis. Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

11. According to your public schedule (see attached), between May 23, 2017 and March 31, 2018, you participated in at least 9 Department staff meetings about the CAFE standards.

- a. Please specify the contents of these meetings.

RESPONSE: The proposed SAFE Vehicles Rule was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking or DOT meetings relate to oversight of the Department of Transportation, and not to the role I would

⁹ <https://www.congress.gov/115/chrgr/shrg29972/CHRG-115shrg29972.pdf>

have at the Department of Justice. In view of your interest in this issue, I am pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. At any of these meetings, did any non-government employees participate in any way? Please specify.

RESPONSE: Any details about the rulemaking or DOT meetings relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- c. According to the NHTSA, 28% of motor vehicle fatalities result from alcohol-impaired-driving crashes.¹⁰ How many meetings did you participate in which sought to reduce drunken driving fatalities? Please specify.

RESPONSE: DOT's top priority is safety. I have met repeatedly and on an ongoing basis with NHTSA and others for the purpose of addressing impaired driving. Any details about DOT meetings relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

12. According to your public schedule (see attached), between May 23, 2017 and March 31, 2018, you participated in at least 19 meetings with executives, lobbyists, and organizations tied to the automotive and/or fossil fuel industries.

- a. During this time, did you meet with any members of environmental groups? Please specify.

RESPONSE: As Deputy Secretary, I attend meetings with a wide variety of different external stakeholders representing many diverse views. Any details about DOT operations or meetings relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. Do you agree that meetings with lobbyists and executives with interests directly related to SAFE can lead to the appearance of impropriety?

¹⁰ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812450>

RESPONSE: The First Amendment to the U.S. Constitution affords a right of citizens to petition their government. It has been a routine practice across all administrations for stakeholders and other interested parties to provide information to agency leaders and staff.

13. According to your Department of Transportation calendar (see attached), you met with Steven Law, the President of American Crossroads, on four separate occasions: May 25, 2017; June 13, 2017; August 1, 2017; and November 13, 2017. Steven Law is the President of American Crossroads – a conservative Super PAC founded by Karl Rove – which has been called, “among the most powerful forces in national politics, a shadow party that has spent hundreds of millions of dollars on advertising, data and opposition research to help elect candidates.”¹¹

- a. What was the official purpose of each of the four meetings with Mr. Law? Please specify the purpose of each meeting.

RESPONSE: Mr. Law was previously the Deputy Secretary of Labor during the period 2003-2007. I met with him to enable me to learn from his management experiences at a relevant domestic Cabinet department.

- b. Were Department of Transportation plans or policies ever discussed at any of the meetings? Please specify.

RESPONSE: I met with Mr. Law to enable me to learn from his management experiences at a relevant domestic Cabinet department.

- c. While employed at the Department of Transportation did you ever use your official position to assist with the activities or fundraising of American Crossroads?

RESPONSE: No.

- d. The May 25, 2017 and August 1, 2017 meetings with Mr. Law are listed as “Lunch with Steven Law”. Where did these lunches occur? Please specify the location of each lunch.

¹¹ <https://www.nytimes.com/2015/05/22/us/politics/american-crossroads-facing-challenges-to-its-political-power.html>

RESPONSE: Except as identified in the calendars themselves, I do not recall, except that I remember at least one being at DOT and being able to walk to any that were not at DOT.

14. In 2007, the Supreme Court ruled that the Clean Air Act required the EPA to regulate greenhouse gases.¹² To comply with the ruling, the EPA completed an internal analysis concluding that carbon dioxide is a threat to human welfare – also known as an endangerment finding. But according to the *Washington Post*, when the EPA sent its endangerment finding to OMB, “OMB staff refused to open it, and it sat in limbo for months.”¹³ The Post also reported that the White House requested, “changes in computer models to lower estimates of the benefits of curbing carbon dioxide”

- a. While at OMB did you ever personally refuse to open an endangerment finding from the EPA?

RESPONSE: Please see my responses to Questions 7 and 12 in response to Ranking Member Feinstein. My recollection is that EPA issued materials in the Federal Register at 73 FR 44354 (July 30, 2008).

- b. While at OMB did you ever direct an employee or have knowledge of an employee refusing to open an endangerment finding from the EPA?

RESPONSE: Please see my response to Question 14(a) above.

- c. How long did it take OMB to act on the EPA’s finding?

RESPONSE: Please see my response to Question 14(a) above.

- d. Please discuss how OMB handled this endangerment finding.

RESPONSE: Please see my response to Question 14(a) above.

- e. Do you agree that carbon dioxide and other greenhouse gases cause the phenomenon known as global warming?

RESPONSE: Please see my response to Question 14(a) above.

¹² *Massachusetts v. EPA*, 549 U.S. 497 (2007).

¹³ Juliet Eilperin and R. Jeffrey Smith, *EPA Won’t Act on Emissions This Year*, WASHINGTON POST (July 11, 2008), http://www.washingtonpost.com/wp-dyn/content/article/2008/07/10/AR2008071003087_pf.html.

- f. Do you agree that the carbon dioxide causing global warming is primarily the product of human activity?

RESPONSE: Please see my response to Question 14(a) above.

- g. You mentioned in response to my questioning at your confirmation hearing that some of the sources I cited were “fake news”. Is this Washington Post report “fake news”? Please specify which claims are false and provide specific evidence

RESPONSE: I regard the 2008 Washington Post article you reference as containing factual errors and an inaccurate depiction. I was not interviewed nor contacted about it at the time.

15. At various points in your career you have been a member of an association called the National Association of Scholars (NAS). NAS is an advocacy group that criticizes academia for having a “liberal bias”¹⁴ and “routinely attack[s] climate science.”¹⁵ NAS It has received hundreds of thousands of dollars from the climate-denying Koch Foundation and the Sarah Scaife Foundation.

- a. Do you believe that the scientific consensus on climate change is incorrect? Please specify the basis for these beliefs.

RESPONSE: As I have said many times, I support protecting our environment. With regard to the environment generally, and climate change in particular, I am strongly in favor of the use of science, the scientific method, and empirical measures and data.

- b. Why did you join NAS?

RESPONSE: NAS is an organization of university professors and others who describe themselves as “united by our commitment to academic freedom, disinterested scholarship, and excellence in American higher education.” I joined NAS because they publish a quarterly journal with articles on a wide range of topics, and I am interested in reading a wide variety of viewpoints.

- c. Will you associate with NAS if confirmed as Deputy Attorney General?

RESPONSE: I have not decided, but I appreciate having access to NAS’ quarterly journal and its focus on the liberal arts.

¹⁴ NAS blog post: https://www.nas.org/articles/nas_board_member_writes_on_liberal_bias_in_academia

¹⁵ EPA: Scientists say they want open data – but not Pruitt’s plan, CLIMATEWIRE (Apr. 25, 2018).

16. What do you view as the most important cyber security issues facing the US?
- a. What role should the Justice Department play in addressing these threats?

RESPONSE: In our increasingly connected world, ensuring the security of our networks is an economic, national security, and public safety imperative. The Department of Justice plays a critical role in the federal government's efforts to detect, deter, and disrupt malicious cyber activity by nation states, criminals, hacktivists and others who use the Internet to enable their criminal activity. Combating cybercrime and cyber-enabled threats through investigation, prosecution, and legal and policy support to other agencies should remain one of the Department's highest priorities. If confirmed, I would work to ensure that the Department has the appropriate authorities, policies, and capabilities to protect American innovation, financial security, and government information from the threat posed by malicious cyber actors.

17. Do you believe that the Department of Justice should operate free of political influence from the White House in certain law enforcement matters, especially those involving specific parties?

RESPONSE: Please see my response to Question 1(a) from Ranking Member Feinstein.

18. Under what circumstances would it be unconstitutional for the President to intervene in the Department of Justice's handling of an enforcement matter involving specific parties?

RESPONSE: I have not studied this issue in detail and am therefore not in a position to set forth on all such situations as an abstract matter. If confirmed, and a question were to arise with respect to a particular enforcement matter, I would consult with Department attorneys on the matter, including the Office of Legal Counsel.

19. Will you commit that you will work to ensure the Department of Justice operates free from political pressure over individual enforcement matters?

RESPONSE: Please see my response to Question 17 above.

20. Is it your view that DOJ regulations, policy, and practice also forbid the indictment of a sitting president? If so, how can the policy obtain Article III review so that a court may “say what the law is”? Should OLC be the final arbiter of this controversial question?

- a. What if there are grounds to indict and the sole reason for declination is the current DOJ policy against indicting a sitting president?

RESPONSE: My understanding is that, for more than 40 years, the Department of Justice has viewed the indictment of a sitting President to be contrary to the structure of our Constitution.

- b. With respect to OLC’s conclusion that the president cannot be indicted under any circumstances while in office, is there any other person in the country who similarly cannot be indicted under any circumstances?

RESPONSE: Under Article II, the executive power is vested in the President alone. I am not aware of any OLC determination that any other official similarly may not be indicted during a term in office.

- c. Should derogatory information against an uncharged president or other official subject to impeachment be provided to Congress? How is Congress to exercise its constitutional rights and carry out its constitutional obligations if such information is shielded?

RESPONSE: Congress has its own constitutional authority in connection with potential impeachments. The Constitution does not require Congress to rely upon the Executive Branch to obtain information about potential misconduct.

- d. Do the public and Congress have a significant interest in facts indicating criminal wrongdoing by the President of the United States while in office?

RESPONSE: The public has a significant interest in the integrity of all of its elected officials.

- e. Do you agree that Congress has a constitutional responsibility to investigate and prosecute a President for high crimes and misdemeanors when warranted?

RESPONSE: The Constitution entrusts the House of Representatives and the Senate with the respective responsibilities to determine when impeachment and removal are warranted.

- f. Do you agree that, in order to carry out its constitutional responsibilities, Congress should be made aware by the executive branch of conduct potentially constituting high crimes and misdemeanors?

RESPONSE: Please see my response to Question 20(c) above. I am aware that the former Chief Justice of the United States, William H. Rehnquist, wrote a book titled “Grand Inquests” (1992) about this process, before he himself presided over the Senate trial of President Clinton.

21. On February 14, 2018, the Washington Post reported that then-White House counsel Donald McGahn made a call in April 2017 to Acting Deputy Attorney General Dana Boente in an effort to persuade the FBI director to announce that President Trump was not personally under investigation in the probe of Russian interference in the 2016 election. On September 13, 2017, White House Press Secretary Sarah Huckabee Sanders suggested from the Press Secretary podium that the Department of Justice prosecute Former FBI Director James Comey. On December 2018, CNN reported that President Trump “lashed out” at Acting Attorney General Whitaker on at least two occasions because he was angry about the actions of federal prosecutors in the Southern District of New York in the Michael Cohen case, in which SDNY directly implicated the president – or “Individual 1” – in criminal wrongdoing. According to reports, Trump pressed Whitaker on why more wasn’t being done to control the prosecutors who brought the charges in the first place, suggesting they were going rogue. Assuming these reports are accurate, did each of these contacts comply with the governing policy limiting DOJ-White House contacts regarding pending criminal matters?

RESPONSE: Because I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media. Therefore, I am not currently in a position to comment on this matter.

22. On January 3, 2019, CNN reported that Acting Attorney General Whitaker spoke in private with former Attorney General and Federalist Society co-founder Edwin Meese, who is now a private citizen. During that meeting, Whitaker reportedly told Meese that the U.S. Attorney in Utah is continuing to investigate allegations that the FBI abused its powers in surveilling a former Trump campaign adviser and should have done more to investigate the Clinton Foundation.

- a. Do those communications seem proper to you?

RESPONSE: I am aware of the referenced conversation only through news media reports and do not know all of the facts and circumstances. Therefore, I am not in a position to comment.

- b. Under what circumstances would you allow officials of the Department to discuss a pending DOJ criminal investigation with a non-witness private citizen?

RESPONSE: Much of the Department's law enforcement work involves nonpublic, sensitive matters. The Department's general policies regarding the disclosure of such information to members of the public are contained at Justice Manual § 1-7.100.

23. What weight will you give the ethics advice of career DOJ officials regarding recusal and conflicts of interest? What explanations will you commit to provide in cases where you choose not to follow their advice?

RESPONSE: If confirmed, when appropriate, I will consult with the Department's career ethics officials and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules.

24. Please describe the nature of your involvement with the Federalist Society, including your participation in any public or private events or meetings.

RESPONSE: As indicated in Appendix 12(d) to my Questionnaire, I have been a participant in panels and programs sponsored by the Federalist Society. I have attended their Annual Dinner several times over the years. I hold no title or formal role, but have known lawyers there for many years and conferred informally from time to time, including during the years when I was an officer (and Chair) of the American Bar Association's Section of Administrative Law and Regulatory Practice.

25. Have you been involved in any way, formally or informally, with the selection, recommendation, or vetting of judicial nominees during the Trump administration? Please describe with specificity the nature of any such involvement, including the names of any judicial nominees on whose nominations you worked.

RESPONSE: I have had no role in judicial selection in the current Administration. I would defer to the White House on any questions about the selection, recommendation, or vetting of judicial nominees.

26. As you are aware, Congress passed—and the President just signed—the most sweeping criminal justice reform in decades. On both the sentencing and prison side, the FIRST

STEP Act incorporates reforms that would seem to go against your previously stated policy views. Will you commit to implement the law faithfully and to let us know if you hit roadblocks or challenges?

RESPONSE: If confirmed, I will work with relevant Department components to ensure the Department implements the FIRST STEP Act and to determine the best approach to implementing the Act.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR KLOBUCHAR

1. When we met prior to your hearing, we had a discussion about antitrust issues and the need for the Justice Department to reinvigorate antitrust law enforcement.
 - a. One of my bills, the Merger Enforcement Improvement Act, would see to it that the antitrust agencies get the resources they need to tackle antitrust enforcement challenges in our rapidly changing economy. Would you support a modest update to merger filing fees to ensure that the antitrust agencies have the resources they need to fulfill their missions?

RESPONSE: I believe that sufficient resources are necessary to maintain appropriate enforcement, including against anticompetitive mergers and monopolization. If confirmed, I will work with the Attorney General and the Antitrust Division to assess what resources are necessary to ensure appropriate and effective enforcement of the antitrust laws.

- b. I am concerned about mergers that give companies the power to unfairly lower prices that they pay for goods or the wages they pay to workers. My bill, the Consolidation Prevention and Competition Promotion Act, would clarify that such mergers would be illegal under the Clayton Act. If confirmed, how will you approach the problems posed by monopsonies?

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

- c. In light of comments that the President has reportedly made regarding pending mergers, I remain concerned with the threat of politically-motivated decision making in the Justice Department's Antitrust Division. If confirmed, what will you do to ensure that the Division's investigatory and enforcement activities are free from improper political influence?

RESPONSE: If confirmed, I will help to ensure that improper political considerations will play no role in the Department's law enforcement activities.

2. I have led legislation for years to prevent those convicted of stalking misdemeanors from being able to buy guns and to extend the protections in current law to include dating partners. Studies have found that women are five times more likely to be killed when a gun is present in situations of domestic abuse, and nearly half of women killed by romantic partners are killed by dating partners. On April 4, the House of Representatives included a provision based on my bill in its reauthorization of the Violence Against Women Act.

- a. Do you agree that we should keep guns out of the hands of domestic abusers, including those who abuse dating partners?

RESPONSE: I support the Attorney General's commitment to using all the tools at the Department's disposal to ensure that firearms do not end up in the hands of dangerous people prohibited by law from having them. I look forward to working with you and others in Congress on this important issue.

- b. Will you support a reauthorization of the Violence Against Women Act that includes needed updates and enhancements?

RESPONSE: If I am confirmed, I would welcome the opportunity to work with you and others in Congress on this important legislation.

3. One of my highest priorities on this Committee has been working to combat human trafficking. Last Congress, I led the Abolish Human Trafficking Act with Senator Cornyn, which reauthorized and strengthened key programs that support survivors of trafficking and provide resources to federal, state, and local law enforcement officials.

- a. In January 2017, the Justice Department released its National Strategy to Combat Human Trafficking, which was required by a provision that I authored in the Justice for Victims of Trafficking Act. That provision also requires an "ongoing assessment of future trends, challenges, and opportunities." Will you commit to updating the National Strategy?

RESPONSE: Human trafficking cannot be tolerated. If confirmed, I will help the Attorney General evaluate the Departmental resources and needs to determine the best method of fighting the scourge of human trafficking.

4. I am concerned about protecting access to the polls and guarding against foreign interference in our elections. I have been working with Senator Lankford on the Secure Elections Act, which provides resources to states to strengthen election cybersecurity and protect against

foreign interference. Do you agree that we should invest in election infrastructure, use backup paper ballots, and create an auditable paper trail for votes?

RESPONSE: Ensuring that our elections are conducted free from corruption, interference, or malign influence by foreign nation states or non-state actors is critical to our democracy. This includes protecting state election systems from cyber threats and promoting resiliency of our voting process. If confirmed, I would look forward to working with Congress on these issues.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR COONS

1. What specific matters have you worked on that have given you the experience required to be Deputy Attorney General? In your response, please refer to your involvement in specific cases, investigations, or decisions.

RESPONSE: As I discussed at my hearing, in my current position as the Deputy Secretary of Transportation, I serve as the chief operating officer of a federal cabinet department with a budget in excess of \$80 billion and more than 55,000 employees with important responsibilities regarding public safety and infrastructure, among other things. In addition, I had nearly 30 years of litigating complex cases all over the United States during my time at my former law firm, Kirkland & Ellis LLP, and I played a leadership role there as well.

If I am confirmed, I intend to learn from and draw upon the thousands of seasoned and experienced prosecutors at the Department of Justice. I believe my experiences demonstrate that I am qualified and able to manage the size of the Department's operations, and that I will utilize all of my resources, including those prosecutors with institutional knowledge, to decide difficult criminal law issues. Additionally, I was pleased to learn that the Committee received letters of support from more than forty former officials from the Department of Justice, including prosecutors and senior officials, and from several law enforcement organizations, including the Sergeants Benevolent Association, the National Fraternal Order of Police, and the National Association of Police Organizations, Inc.

2. During your opening statement at your nomination hearing before the Senate Judiciary Committee, you said that you "expect to draw fully on the extraordinary lawyers with prosecutorial experience at the Department."
 - a. Are you going to defer to lawyers with prosecutorial experience when making decisions regarding criminal or national security matters?

RESPONSE: Every situation depends on its facts. If confirmed, I will welcome input from experienced prosecutors on criminal and national security matters, as well as other matters.

- b. If you are going to apply your own judgment when making decisions regarding criminal or national security matters, how will you ensure that you have all of the facts necessary to make an informed decision?

RESPONSE: As someone who has practiced law for more than thirty-five years in a variety of settings and with regard to a wide variety of matters, I will draw upon all of my past experiences and observations and apply them to this context, and I will derive counsel from appropriate staff at the Department of Justice.

3. What would you do if the President asks you to violate the law or cover up alleged criminal activity (with or without the promise of a pardon)?

RESPONSE: I think that scenario is unlikely to occur. However, if the President or any other official asks me to follow a directive that I believe is contrary to the Constitution or laws of the United States, I would seek to persuade the President or other official of my views or to defer to my judgment. If I were nonetheless directed to do something illegal, I would resign rather than carry out the order.

4. If you learn that the White House is attempting to interfere with any ongoing investigation stemming from the Special Counsel's Office's work, will you report that information to Congress?

RESPONSE: The Department's law enforcement activities must be free of inappropriate political influence—no matter the source. If confirmed, I look forward to ensuring that the Department bases its investigative and prosecutorial decision-making on the law, the admissible evidence, and the Principles of Federal Prosecution. Additionally, my understanding is that longstanding Department policies governs communications between the Department and the White House, and, if confirmed, I plan to maintain those policies, as appropriate.

5. In your nomination hearing, I asked you whether you would discuss specific investigations with the President. More specifically:
 - a. What, in your view, are the circumstances when it is appropriate for the President or another White House official to contact the Department of Justice or the FBI with instructions on how to conduct an ongoing criminal investigation?
 - b. What factors or criteria would you examine to determine if contacts were appropriate?
 - c. What would you do if there were inappropriate communications between the White House and the Department of Justice regarding an investigation?

- d. Is it ever appropriate for the President or another White House official to contact the Department of Justice or the FBI to recommend or request that they open a new investigation?
- e. Is it ever appropriate for the President or another White House official to contact the Department of Justice or the FBI to recommend or request suspending or closing an ongoing investigation?
- f. Is it ever appropriate for the President or another White House official to ask the Department of Justice or the FBI about an ongoing investigation that potentially implicates the President and/or other White House officials?

RESPONSE: Please see my response to Question 4 above. I have not studied this set of hypothetical issues in detail. If confirmed and such a situation arose, I would follow the Department's White House contacts policy and, if necessary, consult with appropriate Departmental officials.

- 6. Attorney General Barr reportedly plans to provide a redacted version of the Special Counsel's report to Congress and the public this week, but Attorney General Barr has characterized this as the "first pass."
 - a. Do you agree that Congress is entitled to receive additional classified material or underlying investigative materials that may not be appropriate for public disclosure?

RESPONSE: Please see my response to Question 2 from Ranking Member Feinstein.

- b. Do you agree that the law allows the disclosure of grand jury information to Congress with a court order?

RESPONSE: The disclosure of grand jury materials is governed by Rule 6(e) of the Federal Rules of Criminal Procedure and judicial decisions construing it.

- 7. Do you believe that Special Counsel Mueller's investigation was a "witch hunt"?

RESPONSE: As I said at my hearing, I am not currently at the Department, and I have had no involvement or contact with the Special Counsel's investigation.

- 8. Last week, Attorney General Barr testified in a Senate Appropriations Committee hearing that he thinks "spying" on the Trump campaign occurred.
 - a. Are you aware of any evidence of unlawful surveillance of any campaign during the 2016 election?

RESPONSE: Because I am currently not at the Department, I do not have access to any non-public sources, and hence do not have any information apart from what is reported publicly in media accounts.

- b. Do you believe that it is appropriate for a law enforcement official to describe lawful surveillance as spying?

RESPONSE: My understanding is that the Attorney General made clear that he was “not saying that improper surveillance occurred,” but that he was “concerned about it and looking into it. That is all.” I do not currently serve at the Department and have no personal knowledge regarding the facts surrounding this issue. I am aware that the Department’s Inspector General is reviewing the matter and expects to issue a report in the coming months. If confirmed, I look forward to reviewing that report.

- 9. Will you commit to taking all necessary steps to fully implement the First Step Act?

RESPONSE: If confirmed, I will work with relevant Department components to ensure the Department implements the FIRST STEP Act and to determine the best approach to implementing the Act.

- 10. Evidence shows that solitary confinement has significant mental health consequences when used for extended periods of time. Do you believe solitary confinement should only be used as a last resort?

RESPONSE: If confirmed, I look forward to reviewing this issue, including the facts of the situation and existing law and policies. Because I am not currently at the Department and not familiar with these facts, it would not be appropriate for me comment further.

- 11. Individuals are being jailed throughout the country when they are unable to pay a variety of court fines and fees. There is often little or no attempt to learn whether these individuals can afford to pay the imposed fines and fees or to work out alternatives to incarceration.

- a. Under your leadership, would the Department of Justice work to end this practice?

RESPONSE: States and localities around the country are reviewing the way fines and fees are assessed in the criminal justice process and exploring ways to improve the delivery of justice to victims, defendants, and the community, including through potential changes to the use of fines and fees.

- b. What is your position on the practice of imposing unaffordable money bail, which results in the pretrial incarceration of the poor who cannot afford to pay?

RESPONSE: The Eighth Amendment to the Constitution states that “Excessive bail shall not be required.” Consistent with the Constitution, bail and other pre-trial restrictions should be imposed only to ensure public safety or that defendants comply with the justice process and appear in court as required.

- 12. The Department of Justice established the Office for Access to Justice (ATJ) in March 2010 to address the access-to-justice crisis in the criminal and civil justice system. ATJ’s mission is to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status.

- a. How will you improve access to justice for indigent criminal and civil defendants?

RESPONSE: As I discussed at my hearing, if confirmed as Deputy Attorney General, one of my charges would be to ensure “the public is treated fairly when it comes to enforcing the law and criminal decisions.” If confirmed, I will work to advance a justice system that is fair to all Americans regardless of wealth and status.

- b. What affirmative steps will you take to improve access to justice?

RESPONSE: Please see my response to Question 12(a).

- c. How will you support the work of the Department of Justice Office for Access to Justice?

RESPONSE: I believe the mission to help the justice system deliver outcomes that are fair and accessible to all is important, and I look forward to learning more about the work being done by the Department.

- 13. According to statistics provided by the Federal Bureau of Investigation, hate crime incidents increased in 2017 for the third year in a row.

- a. Will you prioritize both the prevention and prosecution of hate crimes?
- b. How do you believe the Department of Justice should use its resources to address increases in hate crimes that have occurred during the Trump administration?

RESPONSE: If confirmed, I will be committed to enforcing all federal civil rights laws including hate crimes, which have no place in our society. I note that

Attorney General Barr included hate crimes in his list of priorities upon assuming his position as Attorney General, and I share that priority.

14. This administration has repeatedly delayed implementation of the Death in Custody Reporting Act. Do you think it is acceptable for the administration to delay implementation of this 2014 law until FY 2020?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to reviewing this issue, including the facts of the situation and existing law and policies. Because I am not currently at the Department and not familiar with these facts, it would not be appropriate for me comment further at this time.

15. The total volume of worldwide piracy in counterfeit products is estimated to be 2.5% of world trade (USD \$461 billion). Counterfeit products such as fake pharmaceutical drugs or faulty electronics can cause direct physical harm to Americans, and the profits from these illicit sales often go directly to the coffers of organized crime. How would you use Department of Justice resources to address this growing threat?

RESPONSE: I agree that the trade in counterfeit products poses significant economic and safety concerns to U.S. companies and consumers. If confirmed, I look forward to working with Department of Justice components that can most effectively continue to address this issue.

16. The Department of Justice has made substantial efforts to combat trade secret theft by foreign nationals. In 2009, only 45 percent of federal trade secret cases were against foreign companies; this number increased to over 83 percent by 2015.

- a. Would you prioritize enforcement actions to combat trade secret theft by foreign nationals?

RESPONSE: I am aware that the Department has identified the theft of intellectual property by foreign actors, including economic espionage and theft of trade secrets, as a priority area due to the wide-ranging economic impact on U.S. businesses and, in some situations, the very real threat to the health, safety, and security of the American public. If confirmed, I will continue to prioritize the Department's efforts in this area.

- b. How do you plan to continue the Department of Justice's efforts to successfully target criminal trade secret theft?

RESPONSE: If confirmed, I look forward to working with the FBI and the prosecutors of the Criminal and National Security Divisions, as well as others, to explore means to more effectively combat this growing threat.

17. The United States is currently facing a massive cybercrime wave that the White House has estimated costs more than \$57 billion annually to the U.S. economy. However, a recent study using the Justice Department's own data found that only an estimated three in 1,000 cyberattacks in this country ever result in an arrest.

a. Do you agree that we have to narrow this enforcement gap?

RESPONSE: I agree that there is a need to vigorously investigate and pursue cybercriminals and hold them to account. If confirmed, I look forward to assessing further how the Department can support and enhance efforts to combat cyberattacks.

b. Although it may be difficult to successfully extradite and prosecute individuals located in countries like China, there have been a number of cases in which the U.S. has had success in arresting and extraditing cyber-attackers from foreign countries. Do you agree that we should be more aggressive in using existing laws against cyber-criminals located abroad, such as in China?

RESPONSE: I understand the importance of facilitating the identification, arrest, and prosecution of cyber offenders, including those in China or elsewhere.

c. Will you commit to ensuring that the Computer Crime and Intellectual Property Section and the Office of International Affairs are fully staffed, should you be confirmed?

RESPONSE: Because I am not familiar with the Department's current staffing and budget requests and allocations, I do not have sufficient information to make specific commitments. I am aware, however, of the invaluable role that those two sections play in cybercrime investigations and, if confirmed, would work to support their efforts.

d. What actions would the Department take under your leadership to strengthen private sector cooperation in cybercrime investigations?

RESPONSE: If confirmed, I look forward to assessing further how the Department can enhance cooperative relationships with private sector partners in cybercrime investigations.

18. You noted in our meeting that protecting the integrity of elections is one of the Attorney General's top priorities.

- a. Do you agree that certain photo ID laws can disenfranchise otherwise eligible voters and disproportionately and unreasonably burden African-American and Latino voters?

RESPONSE: If confirmed, I will remain committed to ensuring that all Americans, regardless of their race or ethnicity, are able to participate in our elections and vote. Maintaining and protecting the integrity of our election process is very important to me and will continue to be if I am confirmed.

- b. If confirmed, will you work with Congress to restore preclearance review under the Voting Rights Act by helping to develop a coverage formula that the Department of Justice would support?

RESPONSE: Equal protection under the law is fundamental. If confirmed, I will work to ensure the sanctity of our elections .

- 19. Deaths caused by opioid overdoses have reached epidemic levels in the United States, including in Delaware, with devastating consequences for communities and families.

- a. What actions do you believe are most effective in the Department's efforts to combat the opioid epidemic?

RESPONSE: The Department's enforcement efforts target all aspects of this epidemic, including the over-prescription and diversion of controlled prescription opioids, and traditional illicit opioid heroin and synthetic opioids, such as illicitly-produced fentanyl and its analogues. By leveraging resources of multiple components and at least 14 strike forces operating in 23 districts, the Department is able to focus its resources in places the hardest hit by the epidemic. By relying on data from multiple cross-governmental sources, the Department effectively and efficiently responds to drug trafficking trends and rouge prescribers and supports the activities of U.S. Attorneys' Offices around the country.

- b. How do you think the Justice Department can help to break the cycle of addiction?

RESPONSE: Consistent with the Administration's response to the ever evolving drug addiction epidemic, a coordinated approach of enforcement, prevention, and treatment is necessary to break the cycle of addiction. Although I am not currently at the Department, it is my understanding that the Department leverages activities across its components to support every aspect of this response, including existing Federal, State, local, and tribal partnerships focused on law enforcement, diversion control, and demand reduction. If confirmed, I

look forward to continuing to support the Department's efforts across the United States with its law enforcement and community partners.

- c. Will you work with me on my legislation with Sen. Gardner to ensure that the Drug Enforcement Administration has real-time, nationwide oversight of all orders for controlled substances?

RESPONSE: If confirmed, I would look forward to working with Congress on legislative improvements. Leveraging and strengthening data and eliminating data lag potentially could create a more complete picture of the movement of controlled substances within the closed system of distribution created by the Controlled Substances Act (CSA) and if done appropriately could better assist the Drug Enforcement Administration's (DEA) ability to prevent, detect, and investigate the diversion of controlled substances.

- 20. Do you support the use of specialized courts, such as drug courts and veterans treatment courts?

RESPONSE: As the Attorney General recently testified, the Department supports the good work being done in drug courts and veterans courts. If confirmed, I look forward to learning more about these programs and how the Department can continue to support them.

- 21. My home community of Wilmington, Delaware is working to reduce gun violence, and I want to identify ways that the federal government can help state and local law enforcement confront this challenge. I have worked with Sen. Toomey and others to introduce the NICS Denial Notification Act, which requires the federal government to notify state and local law enforcement when someone fails a background check when trying to purchase a firearm.

- a. Do you agree that it would help state and local law enforcement to know when a prohibited person tried to buy a gun?

RESPONSE: I agree that the federal government has a role to play in helping state and local law enforcement work to reduce gun violence. I am not sufficiently familiar with this proposed legislation to opine on it, but if confirmed, I will ensure that the Department is taking appropriate steps to enhance the efficacy of the background check system to help keep guns away from people who legally are not supposed to have them.

- b. What additional actions do you think the Justice Department should take to address gun violence?

RESPONSE: I believe the Department has at its disposal many powerful tools to combat violent crime, including gun violence, and I want to see that they are deployed as effectively as possible. If I am confirmed, I would welcome the opportunity to work with the Department's law enforcement components to identify any additional steps the Department could take to further reduce gun violence.

22. Studies show that five percent of gun dealers sell 90 percent of guns that are subsequently used in criminal activity. How would you direct the Department of Justice to instruct the Bureau of Alcohol, Tobacco, Firearms and Explosives to crack down on dealers that funnel thousands of crime guns to city streets?

RESPONSE: While I am not familiar with the studies you reference, ATF's Deputy Director recently testified before Congress that the statistic cited is outdated and does not accurately reflect current circumstances. However, protecting the public from violent gun-related crime is one of the Department's top priorities, and enforcement of the regulations governing federal firearms licensees is an important tool in accomplishing this goal. If confirmed, I will work closely with ATF to ensure that it continues to appropriately and effectively focus its criminal and regulatory enforcement resources on the reduction of firearm-related violence.

23. Last year, the Justice Department implemented a zero tolerance immigration enforcement policy, which resulted in the separation of thousands of children from their parents. This was a government-created humanitarian crisis. Will you commit that if confirmed to be the United States Deputy Attorney General, you will not advocate for any policy that would have the effect of separating migrant children from their parents, even if family separation is not the goal of the policy?

RESPONSE: I am not currently at the Department, and I do not know all the details of the Zero Tolerance Initiative. I do know that 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.

24. I am concerned that the Trump administration has routinely opposed environmental regulations that would protect our planet for future generations. The Assistant Attorney General of the Environment and Natural Resources Division, Jeffrey Bossert Clark, previously stated that the science behind climate change was "contestable." When you were the General Counsel of the Office of Management and Budget (OMB) during the George W. Bush administration, OMB delayed action on climate change. You have also criticized the Obama administration's efforts to combat climate change.

- a. Do you believe climate change poses a threat to the United States?

RESPONSE: As I have said many times, I support protecting our environment. With regard to the environment generally, and climate change in particular, I am strongly in favor of the use of science, the scientific methods, and empirical measures and data.

- b. If confirmed, what steps will you take to ensure that the Justice Department prosecutes companies that violate environmental regulations?

RESPONSE: Congress has provided for civil and criminal actions under the environmental laws, and the United States Department of Justice has an active civil and criminal environmental enforcement program and brings numerous civil enforcement actions and criminal prosecutions as part of that program. This include bringing actions against companies when they violate environmental laws and regulations.

- 25. While you were the General Counsel of OMB, the Environmental Protection Agency concluded that man-made global warming endangered public welfare and sent the proposed finding to OMB. According to the *Washington Post*, “OMB staff refused to open it, and it sat in limbo for months.”

- a. Did you refuse to open any documents provided by the EPA or direct anyone else to refuse to open such documents?

RESPONSE: Please see my response to Question 12 from Ranking Member Feinstein.

- b. Did you oppose the EPA issuing an official statement that global warming harms human welfare?

RESPONSE: My recollection, which differs from the premise of this question, is that EPA issued materials in the Federal Register at 73 Fed. Reg. 44354 (July 30, 2008).

- 26. According to multiple reports, the Trump administration’s justification for freezing fuel economy standards included calculation mistakes, misleading assumptions, and other errors.

- a. Please describe in detail your role in preparing this analysis.
- b. Do you acknowledge that the analysis included calculation mistakes, misleading assumptions, and/or errors?

RESPONSE: Please see my response to Question 15 from Ranking Member Feinstein.

27. According to your Senate Judiciary Committee Questionnaire, you served as the chief legal counsel to the Platform Committee of the Republican National Convention in 2012.
- a. Please describe your role as chief legal counsel to the Platform Committee in detail, including any role that you had in drafting, reviewing, or suggesting revisions to the platform.
 - b. Do you agree with the following section of the platform, and did you have any role in drafting, reviewing, or revising it? “In addition to appointing activist judges, the current [Obama] Administration has included an activist and highly partisan Department of Justice. With a Republican Administration, the Department will stop suing States for exercising those powers reserved to the States, will stop abusing its preclearance authority to block photo-ID voting laws, and will fulfill its responsibility to defend all federal laws in court, including the Defense of Marriage Act.”
 - c. Do you agree with the following section of the platform, and did you have any role in drafting, reviewing, or revising it? “The Patient Protection and Affordable Care Act – Obamacare – was never really about healthcare, though its impact upon the nation’s health is disastrous. From its start, it was about power, the expansion of government control over one sixth of our economy, and resulted in an attack on our Constitution, by requiring that U.S. citizens purchase health insurance. We agree with the four dissenting justices of the Supreme Court: ‘In our view the entire Act before us is invalid in its entirety.’”

RESPONSE: Please see my response to Question 11(a) from Ranking Member Feinstein.

28. In an op-ed in the *Washington Post*, you criticized President Obama’s “proposed government takeover of health care.” If confirmed, will you reevaluate the Department of Justice’s position to refuse to defend the Affordable Care Act and, in the process of doing so, consult with career officials who disagreed with the Department’s position not to defend the law?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of this decision, and because it is a matter pending in litigation, I am not in a position to comment on it.

29. When is it appropriate for the Department of Justice to decide not to defend a federal law?

RESPONSE: In general, without cataloguing all nuances and exceptions, the Department should defend the constitutionality of federal statutes when there are reasonable arguments in their defense, unless the statutes are demonstrably unconstitutional, have already been addressed by the Supreme Court, or impinge on separation-of-powers concerns.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR BLUMENTHAL

1. The Deputy Attorney General of the United States has direct authority over multiple Department of Justice components that handle complex criminal and national security matters. Specifically, all U.S. Attorneys, the Criminal Division, National Security Division, the FBI, DEA and Interpol Washington report directly to the Deputy Attorney General.

- a. When we met in my office, you said you would surround yourself with people with criminal law expertise. But smart people with significant experience in criminal law can still disagree on sensitive issues and close calls. How will you evaluate those disagreements to come to a decision?

RESPONSE: I have handled complex litigation in a wide variety of contexts for more than thirty years. If confirmed, I intend to consider carefully the views of the disputing Department components or lawyers and to consult relevant subject matter experts within the Department, in order to weigh the relevant factual and legal issues before making a decision.

- b. On certain difficult, high-profile cases, the final decision on whether or not to proceed with an indictment is made by the Deputy Attorney General. What factors will you consider in deciding whether to proceed with such an indictment?

RESPONSE: Please see my response to Question 1(a) above, and my response to Question 4 from Ranking Member Feinstein.

- c. The Deputy Attorney General's office resolves venue disputes, where two different U.S. Attorney's Offices are each pursuing the same investigation or case. What factors would you use in deciding such disputes?

RESPONSE: If confirmed, I intend to consider carefully the views of the disputing U.S. Attorney's Offices and consult relevant subject matter experts within the Department, in order to weigh the relevant factual and legal issues before making a decision.

2. The Deputy Attorney General has supervisory authority over all 94 US Attorneys' offices throughout the United States. Several of these offices are currently investigating the president. Reports indicate that the president has tried on numerous occasions to interfere in these investigations.

- a. Will you commit to this Committee that you will refuse any order from President Trump or Attorney General Barr to interfere in any U.S. Attorney's investigation or prosecution implicating the president, his family, or his associates?

RESPONSE: As I said repeatedly at my hearing, the Department's enforcement decisions will be based on the facts and the law, not on any improper external political considerations.

- b. Will you commit to submitting your resignation if you are asked to engage in such interference?

RESPONSE: I think this hypothetical scenario is unlikely to occur. However, if the President or any other official asks me to follow a directive that I believe is contrary to the Constitution or laws of the United States, I would seek to persuade the President or Attorney General of my views or to defer to my judgment. If I were nonetheless directed to do something illegal, I would resign rather than carry out an illegal order.

- c. Will you commit to coming before Congress and being fully transparent about what was asked of you, were this to happen?

RESPONSE: This is a hypothetical that I do not expect to occur. If confirmed, I will endeavor to accommodate any legitimate oversight needs, consistent with the Department's law enforcement, national security, and litigation responsibilities.

- d. What will you do if the President asks you to report to him about the status of a criminal investigation at the Department of Justice?

RESPONSE: If I am confirmed, I would plan to act in accordance with applicable Department of Justice protocols, including the 2009 Memo on communications with the White House issued by former Attorney General Holder. As I said at the hearing, "I have a long, professional track record that I'm proud of--of integrity, of ethics of professionalism and that's not going to change. I am going to do the right thing in accordance with the law and the rules, the ethical requirements at every juncture."

- e. What is your view on the level of information that is appropriate to share with the White House about an ongoing criminal investigation?

RESPONSE: Please see my response to Question 1(a) from Ranking Member Feinstein.

- 3. In an op-ed in the Washington Post, you criticized President Obama's "proposed government takeover of health care," in reference to the Affordable Care Act ("ACA"). You wrote, "[w]ith his 'stimulus' bill, 'cap and trade' solution to global warming, and proposed government takeover of health care, President Obama has made no secret of his desire to expand the size, role and budgets of federal health and safety regulators."

The Trump Administration, through the Department of Justice, recently argued in federal court that the ACA should be overturned. The Department argued in a brief that a recent district court decision that invalidated Obamacare is correct. This is a departure from the normal practice of the Department of Justice, which is usually to defend laws on the books, like the ACA, from legal challenge.

- a. Do you support the Trump Administration's stance that the ACA should be struck down in its entirety?
- b. Do you believe the ACA is unconstitutional?

RESPONSE: Because I am not currently at the Department, I am not familiar with the specifics of this decision, and because it is in litigation, I am not in a position to comment on it.

- 4. In testimony before the House Appropriations Committee, Attorney General Barr was asked about the Trump Administration's cruel policy of separating families at the border. In response, Attorney General Barr said, "I support the president's policy, which is [that] we're not going to separate families."

Recent news reports, however, indicate that President Trump has told his aides he wants to reinstate family separation at the border, and even ordered agents to resume the practice. As Deputy Attorney General, you would supervise the criminal enforcement components of the Department of Justice. You would also be in a position to provide advice on the legality of the president's policies.

- a. Do you support the Trump Administration's family separation policy?
- b. Do you believe this policy is legal?

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

5. During your confirmation process to be Deputy Secretary of Transportation in 2017, you denied “ask[ing] about such molecules being different” and stated that the New York Times “account was inaccurate.”

In 2008, the Washington Post reported that while serving as General Counsel for the Office of Management and Budget, you asked during a meeting “if carbon dioxide emissions from a tailpipe could be treated differently than those from a power plant.” Similarly the New York Times reported in 2008 that you “asked three times for separate memorandums describing why carbon dioxide molecules emitted from vehicles (already likely to be subject to regulation) could not be distinguished from CO₂ molecules emitted from power-plant smokestacks (whose regulation was opposed by powerful segment of the industry and administration).”

These reports were corroborated by Jason Burnett, a former Associate Deputy Administrator of the Environmental Protection Agency. During his testimony before the Senate Committee on Environment and Public Works in 2008, Mr. Burnett stated that you “had raised that questions multiple times” as general counsel of the Office of Management and Budget.

How do you reconcile these public reports with your denial, during Congressional testimony, of having asked this question while serving as the General Counsel at OMB?

RESPONSE: Please see my response to Question 12 from Ranking Member Feinstein.

6. One of the major achievements of the last century is the recognition that racial segregation is a great moral and legal wrong. The Supreme Court recognized this truth in one of its most esteemed decisions, *Brown v. Board of Education*. I would hope that, in 2019, the correctness of the *Brown* decision cannot be in dispute.

Attorney General Barr, in his answers to my questions for the record responded unequivocally to the question of whether *Brown* was correctly decided. He gave me a simple and clear answer – yes. Yet during your confirmation hearing you refused to answer the question. This is not the first time I have faced evasive answers with regards

to *Brown*. Two years into the Trump Administration and judicial nominee after judicial nominee has come before this committee firmly and repeatedly declining to say that they believe *Brown* was correctly decided. If confirmed as Deputy Attorney General, you will oversee the Office of Legal Policy. Part of your duties will be to advise the president on judicial nominations, so I ask you this:

- a. Do you believe *Brown v. Board of Education* was correctly decided?

RESPONSE: Yes. I have always defended the equal protection of the laws. I abhor invidious discrimination, bigotry, and hatred. The point I made to you during my hearing was that there are thousands of other Supreme Court cases, and whether I agree with each of them or not, so long as they remain the law, the Department of Justice is responsible for applying the law.

- b. Will you commit to only recommending for nomination individuals who believe *Brown* was correctly decided?

RESPONSE: While I am not familiar with the current judicial selection process, my understanding is that judicial candidates are not asked for their views on *Brown* or any other case. Any judicial nominee must be prepared to swear an oath to our Constitution.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR HIRONO

1. At your hearing, Sen. Blumenthal asked you whether you agreed if *Brown v. Board of Education* and *Roe v. Wade* were corrected decided. You refused to answer, stating that *Roe v. Wade* has been “the precedent of the Supreme Court for better than 40 years now and unless and until that changes it’s the law.” You explained your refusal to answer by stating that “whatever the law is whether it’s the decision I would favor or disfavor I see it as the role of the Department of Justice to uphold the law such as it is unless Congress or the courts change it.”

- a. Your caveat with respect to *Roe v. Wade* – that is long-established precedent “unless and until that changes” – is curious. Is it your view that that *Brown v. Board of Education* is also only the law “unless and until that changes”?

RESPONSE: *Brown v. Board of Education* is a landmark opinion of the Supreme Court that overturned *Plessy v. Ferguson* and the odious separate-but-equal doctrine. As someone who supports the equal protection of the law for all Americans, it is unthinkable to me that *Brown* would ever be overturned.

- b. Given your stated view that the role of the Justice Department is to “uphold the law such as it is unless Congress or the courts change it,” do you believe the Justice Department’s recent efforts to argue that a court should deem the Affordable Care Act unconstitutional are an improper exercise of the Justice Department’s authority?

RESPONSE: Please see my responses to Question 29 from Senator Coons and to Question 3(b) from Senator Blumenthal.

- c. Judicial nominees often decline to answer Senator Blumenthal’s question about *Brown v. Board*, saying they don’t want to signal how they would rule if the issue were to come before them. I disagree with them, but even if I didn’t, your refusal to answer makes no sense. As Deputy Attorney General, with supervisory authority over both the Civil Division and the Office of the Solicitor General, you would have significant input into which legal arguments the Department of Justice makes in District and Circuit Courts, as well as the Supreme Court. Are you saying that if a challenge to *Brown v.*

Board came, for instance, from a public school district wanting to segregate students by race, you would not advocate for the federal government to argue that *Brown* be upheld? Do you think *Brown* is still good law?

RESPONSE: At no time did I say, hint, or imply that I would not argue to uphold *Brown* in the unthinkable case that it were challenged by a litigant. To suggest otherwise simply does not follow in any way from what I said. *Brown*, thankfully, remains good law. Please see my response to Question 6(a) from Senator Blumenthal.

2. CNN reported that the President has recently fired or is considering firing top Homeland Security officials in what an official has called a “near-systematic purge.” These officials reportedly refused some of President Trump’s demands to implement legally questionable and even outright unlawful policies.

- a. If the President asked you to adopt a legally questionable policy, would you refuse? Would you resign rather than execute that policy?

RESPONSE: Please see my responses to Question 1(b) from Ranking Member Feinstein and Question 18 from Senator Durbin.

- b. If the President asked you to adopt a clearly unlawful policy or to violate a court order blocking the President’s policy, would you refuse? Would you resign rather than execute that policy?

RESPONSE: Please see my response to Question 2(a) above.

3. The President has been at numerous rallies where he has prodded the crowd into chanting “Lock her up,” in reference to his political opponent Hillary Clinton. If the President directed you to open or stop a criminal investigation of his opponents or supporters, would you refuse? Would you resign rather than open a criminal investigation for purposes of political retribution?

RESPONSE: As I said repeatedly at my hearing, the Department’s enforcement decisions must be based on the facts and the law, not on any improper external political considerations.

4. At Rod Rosenstein’s confirmation hearing to be Deputy Attorney General, I asked him whether he “agree[d] that the Office of the Attorney General is not the president’s personal law firm.” He answered, “Absolutely.” Do you think that the Office of the Attorney General is the president’s personal law firm?

RESPONSE: No.

5. When I asked you at your hearing whether you would commit to not reinstating the zero-tolerance policy or family separation policy, you seemed to be unclear about what former Attorney General's zero-tolerance policy did. Now that you've had a chance to familiarize yourself with the policy:
- a. If the Department of Homeland Security changed course again and referred families for prosecution of illegal entry, would you continue the zero-tolerance policy, knowing that it would result in children being separated from their parents?

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

- b. Do you believe that the zero-tolerance policy of prosecuting *all* Department of Homeland Security referrals of illegal reentry is an appropriate use of the Justice Department's limited resources?

RESPONSE: Please see my response to Question 5(a) above.

- c. If confirmed, will you continue to implement former Attorney General Sessions's April 11, 2017 memo that directs federal prosecutors to highly prioritize the enforcement of immigration laws?

RESPONSE: I am not currently at the Department of Justice and am not yet in a position to respond as to this particular memo. However, immigration laws—like other laws—are duly passed by Congress, and it is the duty of the Department of Justice to enforce them.

6. In 2012, you served as chief legal counsel to the Platform Committee of the Republican National Convention. That year, the Republican Platform included positions that:
- Advocated for denying federal funding to sanctuary cities;

- Opposed restrictions on gun ownership, including limits on magazines and capacities of clips;
 - Argued that the Affordable Care Act was “invalid in its entirety” and a “mark of an outdated liberalism”;
 - Called for vigorous enforcement of voter fraud, without providing a factual basis for a problem involving voter fraud;
 - Supported efforts to restrict abortion rights; and
 - Opposed same-sex marriage.
- a. Please state whether you agree with each of the positions in the 2012 Republican Platform listed above. If you refuse to answer this question, please state the legal reason for that refusal.
 - b. Please explain what your role was in developing each of the 2012 Republican Platform positions listed above. If you refuse to answer this question, please state the legal reason for that refusal.

RESPONSE: Please see my response to Question 11(a) from Ranking Member Feinstein.

7. At your hearing, I asked you whether you believe birthright citizenship is guaranteed by the Fourteenth Amendment of the U.S. Constitution. You said you “have never had occasion to study that question.” You repeated this same answer, even after I read you the clear text of the Fourteenth Amendment, which states “All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside.”

In 1995, Walter Dellinger, then-Assistant Attorney General for the Office of Legal Counsel testified in the House Judiciary Subcommittees on Immigration and Claims and on the Constitution that to change birthright citizenship the Constitution would have to be amended. See <https://www.justice.gov/file/20136/download>.

- a. Now that you have had a chance to look at the Constitution and read Mr. Dellinger’s testimony, do you believe that birthright citizenship is guaranteed by the 14th Amendment?

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

- b. If you believe that you need to study the 14th Amendment further to determine whether it guarantees birthright citizenship, please explain which specific words in the 14th Amendment are unclear in meaning. If you refuse to answer this question, please state the legal reason for that refusal.

RESPONSE: Please see my response to question 7(a) above.

- 8. Last week, the New York Times and CNN reported that the President “privately urged” Customs and Border Protection Commissioner Kevin McAleenan, “to close the southwestern border to migrants” and told the Commissioner that he “would pardon [McAleenan] if he ever went to jail for denying US entry to migrants.”

- a. Do you believe that urging someone to take a legally questionable action while promising to issue a pardon if he or she is held accountable for the unlawful actions is a legitimate use of the President’s pardon power?

RESPONSE: Under the Constitution, the President’s power to pardon is broad. As to its specific contours and limits, I would need to consult with the Office of Legal Counsel and other relevant Department personnel.

- b. If confirmed, will you recommend that Donald Trump pardon any of the people who have already been convicted or have pleaded guilty under Special Counsel Robert Mueller’s investigation or in related cases?

RESPONSE: I am not familiar with the facts and circumstances of the cases of those who have been convicted in connection with those investigations apart from media reports. I am not in a position to speculate about how I might advise the President in such circumstances.

- c. Would you agree that pardoning anyone who is subject to a current indictment or will be subject to a future indictment in connection with the Special Counsel’s investigation could be seen as an abuse of the President’s pardon power?

RESPONSE: To my knowledge, the President has not pardoned anyone subject to a current or future indictment in connection with the Special Counsel’s investigation. As the nominee for Deputy Attorney General, I do not believe that I should address hypotheticals that may relate to the ongoing cases.

- d. Do you believe it is proper for the President to use his pardon power to pardon his family members or any associates of businesses, foundations, campaigns, or organizations in which he has a personal interest?

RESPONSE: The President has an obligation to take care that the laws be faithfully executed and to exercise his authority in the best interests of the country.

- 9. At the hearing, Senator Feinstein asked you about a New York Times article that identified you as one of the chief authors of the Trump administration plan to roll back Corporate Average Fuel Economy (CAFE) and vehicle emissions standards by locking in 2020 standards through 2026. You told her that the New York Times mischaracterized your role.

- a. Please explain in detail what your role was in the Trump administration's efforts to roll back CAFE and vehicle emissions standards.

RESPONSE: The proposed SAFE Vehicles Rule was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. Your calendar as Deputy Secretary of Transportation includes at least 11 meetings that appear to be related to these deregulatory efforts. For example, these meetings are listed with subjects such as "Cafe Strategy," and "CAFE Update w/Heidi King." Please explain what was discussed at these meetings and what your role was at these meetings. If you refuse to answer this question, please state the legal reason for that refusal.

RESPONSE: Please see response to Question 9(a) above. In my role as Deputy Secretary of Transportation it is common for me to receive briefings from or have discussions with DOT's Operating Administrations concerning their ongoing activities. Any details about the rulemaking or DOT meetings relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

10. The Trump administration has not brought a single lawsuit to enforce the Voting Rights Act. Moreover, the administration has actually withdrawn the Justice Department's claim against a Texas voter ID law that a federal district court judge found was enacted with discriminatory intent and reversed its position in a case by defending Ohio's voter purge efforts that Justice Sotomayor recognized "disproportionately affected minority, low-income, disabled, and veteran voters." In fact, career attorneys in the Civil Rights Division did not sign the amicus brief defending the voter purge efforts as they did the prior brief.

- a. Will you commit to vigorously enforcing the Voting Rights Act to protect the rights of minorities to vote?

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

- b. Will you commit to asking the Voting Rights Section of the Civil Rights Division to present to you all the instances where the Justice Department has been asked to initiate Section 2 claims under the Voting Rights Act and allowing the career attorneys in the Voting Rights Section to bring claims where appropriate?

RESPONSE: Please see my response to question 10(a) above.

- c. Similarly, if confirmed, will you commit to investigating, evaluating, and reviewing those states and jurisdictions—including any that were formerly covered under the Voting Rights Act's preclearance system—that have passed voting laws that tend to hinder voter turnout to determine if they are, in fact, discriminatory, and to bring Section 2 claims under the Voting Rights Act for any that are found to have a discriminatory impact or purpose?

RESPONSE: Please see my response to question 10(a) above.

- d. Should you be confirmed, will you commit to working with Congress to support a fix to Section 5 of the Voting Rights Act, which was nullified by the Supreme Court in *Shelby County v. Holder*?

RESPONSE: If confirmed, I will be pleased to work with Congress regarding any appropriate legislation that supports the Department's mission and priorities.

- e. If confirmed, will you commit to reviewing the decisions by the Justice Department to switch positions in the following two cases to determine whether customary processes for changing the government's position in a case were followed and what, if any, improper influences impacted those decisions? The two cases are: (1) *Veasey v. Abbott*, where the Department withdrew its claim that a Texas voter ID law was enacted with a discriminatory intent, despite a finding of discriminatory intent by a federal district court, and (2) *Husted v. A. Philip Randolph Institute*, where the Department reversed its position by defending Ohio's voter purge efforts under the National Voter Registration Act, even though Justice Sotomayor recognized such efforts "disproportionately affected minority, low-income, disabled, and veteran voters."

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans. I understand from publicly available information that *Veasey v. Abbott* did not involve a change in legal position by the Department. Rather, it involved a change in law by the Texas Legislature. In particular, in 2017 the Texas Legislature amended the challenged voter ID law to largely incorporate the interim remedy that the federal courts had put in place for the 2016 election. In its most recent decision in this case in 2018, the U.S. Court of Appeals for the Fifth Circuit agreed with the Department that this amendment was sufficient to remedy the alleged defects in the original law. I also understand from publicly available information that the Supreme Court upheld the Department's position in *Husted v. A. Philip Randolph Institute*.

- 11. After the Supreme Court's decision in *Shelby County v. Holder*, many states passed voting restriction laws based on claims of going after voter fraud. But a 2014 study found a total of 31 credible allegations of voter fraud between 2000 and 2014 out of more than 1 billion votes cast.
 - a. Are you aware of any credible study that confirms that there was massive voter fraud, not election fraud, in either the 2016 or 2018 election?
 - b. Do you agree that voter fraud is incredibly rare in the context of the number of votes cast?

RESPONSE: I have not studied this issue and therefore have no basis to reach a conclusion. If I am confirmed, my decisions will be based on the facts and the law.

12. In a 2017 report entitled *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, the Civil Rights Division explained that “its experience demonstrates that court-enforceable consent decrees are most effective in ensuring accountability, transparency in implementation, and flexibility for accomplishing complex institutional reforms. Federal court oversight is often critical to address broad and deeply entrenched problems and to ensure the credibility of the reform agreement’s mandates.” But last November, just before leaving the Department, former Attorney General Jeff Sessions issued a memo that drastically limited use of consent decrees to bring police departments into compliance with the Constitution. At your hearing, you stated that you agreed with Mr. Sessions’s memo and questioned whether the policy changes in the memo would make it tougher to enter into consent decrees for pattern or practice violations.
- a. Do you agree with the Civil Rights Division’s report that based on its experience, “court-enforceable consent decrees are most effective” in accomplishing complex institutional reforms in a transparent way that ensures accountability?
 - b. Despite the Civil Rights Division’s finding regarding the historical effectiveness of consent decrees, Mr. Sessions’s memo warns that “the Department should exercise special caution before entering into a consent decree with a state or local governmental entity.” Among other changes, it requires any consent decrees to be approved not only by the Assistant Attorney General for Civil Rights or the U.S. Attorney, but also by the Deputy Attorney General or the Associate Attorney General. Would you agree that that Mr. Sessions’s memo imposes more stringent requirements for the Civil Rights Division to pursue consent decrees, making it harder to enter into consent decrees for pattern or practice violations? If not, please explain.

RESPONSE: I am not familiar with this particular study and, beyond what I have seen reported in the media, have no knowledge of the facts and circumstances surrounding the assertions in the questions being posed. As a result, while I am aware of former Attorney General Sessions’ memo, I am not in a position to comment on the report.

13. Former Attorney General Sessions eliminated a highly effective program handled by the Office of Community Oriented Policing Services—also known as the COPS Office—that allowed local police departments to voluntarily work with Justice Department officials to improve trust between police and the public without court supervision and consent decrees. Former head of the Justice Department’s Civil Rights Division Vanita Gupta criticized this decision, saying “[e]nding programs that help build trust between police and the communities they serve will only hurt public safety.”

Under the Collaborative Reform Initiative for Technical Assistance program, local police departments involved in controversial incidents, such as police-involved shootings, would ask the COPS Office to investigate and issue public reports with recommendations.

- a. If confirmed, will you reinstate this program?
- b. If confirmed, what steps will you take to support and promote community-oriented policing?

RESPONSE: If confirmed, I look forward to learning more about this issue. It is my understanding that the COPS Office and its program efforts continue to promote police and community engagement promoting responsibility and accountability. Working with law enforcement agencies to promote effective crime fighting, combined with a strong community engagement partnership, is a promising approach and creates mutual benefits for the law enforcement agencies and the communities being served.

14. The Washington Post published an article on January 3, 2019 that reported that a “recent internal Justice Department memo directed senior civil rights officials to examine how decades-old ‘disparate impact’ regulations might be changed or removed in their areas of expertise, and what the impact might be.” In 2015, the Supreme Court, in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, affirmed that the Fair Housing Act protects against discrimination based on a disparate impact.

- a. Do you believe that there are actions that can have a discriminatory impact regardless of intent? If so, how do you propose such actions should be addressed or remedied?
- b. Do you believe that a valid way to demonstrate discrimination is through a disparate impact analysis?
- c. If you are confirmed, will you continue this reported DOJ effort to change or remove disparate impact regulations related to enforcing civil rights laws?

RESPONSE: As I am not currently at the Department, and had not previously seen the media article you reference, I am not currently in a position to comment on this specific matter.

15. The Justice Department has the responsibility for enforcing the Americans with Disabilities Act (ADA), one of the most successful civil rights laws passed in the

United States. It has integrated people with disabilities into American life in ways they had not been before.

Last Congress, the House of Representatives passed H.R. 620, the “ADA Education and Reform Act of 2017,” which would remove most incentives for businesses to accommodate people with disabilities, and reward businesses for ignoring their responsibilities under the law. It was opposed by disability rights groups, and seen as a giant step backward for the country.

- a. Do you support these restrictions on the ADA’s protections?

RESPONSE: I am not familiar with the details of that legislation. If confirmed, I would look forward to working with Congress regarding any legislation that supports the Department’s mission and priorities.

- b. Do you believe the ADA goes too far in protecting the rights of people with disabilities?

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

- c. If confirmed, will you allow the Disability Rights Section of the Civil Rights Division to robustly enforce the ADA?

RESPONSE: Please see my response to question 15(b) above.

16. Last July, the Justice and Education Departments rescinded policy guidelines promoting diversity in education. This was in the context of a lawsuit brought by a conservative organization to challenge Harvard’s diversity admissions policies. Do you believe that policies that promote diversity necessarily discriminate against other racial groups?

RESPONSE: As this matter is currently being litigated in our courts, I do not believe it would be appropriate for me to comment at this juncture.

17. U.S. Immigration Courts operate as a component of the Department of Justice, which creates the possibility that Immigration Judges can be subjected to inappropriate political pressure. Moreover, former Attorney General Jeff Sessions decided to effectively subject Immigration Judges to quotas, which may make it difficult for these judges to review each case fully and fairly. What is your view of how Immigration Judges ought to be categorized and treated?

RESPONSE: I understand that the Immigration and Nationality Act provides that immigration judges are supervised by the Attorney General. Beyond that, I

have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter. I will work to help ensure that immigration judges are supervised appropriately to provide effective and efficient processing of immigration cases consistent with the law.

18. Recently, Attorney General Barr continued Former Attorney General Sessions' troubling, unusual practice of intervening in individual asylum applications and deciding cases himself as a way of making policy to limit the rights of asylum seekers. On April 16, 2019, Attorney General Barr directed immigration judges to stop allowing certain asylum seekers to post bail by overturning an immigration appeals decision in the *Matter of M-S-*. When Mr. Sessions was Attorney General, he used the case *Matter of A-B* to overturn legal precedent and longstanding policies by significantly restricting the ability of victims of domestic violence and gang violence to obtain asylum relief. A court eventually struck down many of these new policies and ordered the government to bring prior claimants back to the United States who have already been deported so they can pursue their asylum claims. Do you think it is appropriate for an attorney general to intervene in immigration cases in order to set policies that narrow asylum protections that immigration judges have recognized were established by Congress?

RESPONSE: I am generally aware that, under the Immigration and Nationality Act, determinations and rulings by the Attorney General with respect to questions of law are controlling. Beyond that, I have not studied the issues raised by this question in detail, nor am I familiar with the process by which the Attorney General issues rulings in immigration cases. If confirmed, I look forward to learning more about the process and these issues.

19. Native Americans experience higher rates of domestic violence and sexual assault than other groups. According to a 2016 National Institute of Justice study, 56.1% of American Indian and Alaska Native women have experienced sexual violence in their lifetimes. Should you be confirmed, what steps will you take to ensure that the Office on Violence Against Women addresses the needs of Native Hawaiian, Alaska Native, and American Indian survivors of domestic violence and sexual assault?

RESPONSE: If confirmed, I will continue to support the Office on Violence Against Women's (OVW) priority of addressing the needs of American Indian, Alaska Native, and Native Hawaiian victims. It is my understanding that OVW administers multiple grant programs to help ensure that Native Hawaiian, Alaska Native, and American Indian victims of these crimes receive needed services and that offenders are held accountable. I look forward to learning more about this important work.

20. Recent surveys of law enforcement officials, court officials, legal service providers, and victim advocates have found that fear of immigration enforcement is a significant barrier for immigrant survivors of sexual assault and domestic violence to seek help from law enforcement and the legal system. The immigration provisions of the Violence Against Women Act were enacted to address how the immigration process can be used by domestic violence, sexual assault, dating violence and stalking abusers to further perpetrate abuse and maintain control over their victims. If you are confirmed, what steps would you take to ensure that the Justice Department's Office on Violence Against Women supports access for vulnerable victims to VAWA's protections for non-citizen victims of domestic violence, sexual assault, dating violence, and stalking?

RESPONSE: It is my understanding that the Department of Homeland Security is responsible for implementing VAWA's immigration protections for victims. However, the Department's Office on Violence Against Women (OVW) administers VAWA's grant programs, which include a number of provisions designed to ensure that services reach non-citizen victims of domestic violence, sexual assault, dating violence, and stalking. If confirmed, I will enforce all federal laws, including VAWA, and work to ensure that VAWA programs are implemented in the most effective manner.

21. In October 2018, The Washington Post published an article asserting that "Attorney General Jeff Sessions and Solicitor General Noel J. Francisco have repeatedly gone outside the usual appellate process to get issues such as the travel ban, immigration and greater authority for top officials before the justices." The article argued that they aggressively bypassed the normal process of appealing lower court decisions to circuit courts, and tried to short-circuit the judicial process on the Trump administration's "signature issues by seeking extraordinary relief from a reformed conservative Supreme Court."

- a. Do you believe this strategy is proper? Do you think such efforts to repeatedly bypass the normal judicial processes may erode public confidence in the judicial system?

RESPONSE: The proper litigation strategy in any case depends on its facts and the applicable law. The Supreme Court's rules permit requests for emergency relief, and those requests can be appropriate in some circumstances—for example, when a lower court has entered an extraordinary form of relief such as a nationwide injunction of a significant Executive Branch policy.

- b. Should you be confirmed, will you review the Trump administration's efforts to bypass the appellate courts and jump directly to the Supreme Court and reconsider this strategy?

RESPONSE: If confirmed, I would work closely with the Department's relevant components and would consider each case carefully on its facts and the applicable law.

22. In an op-ed published in The Washington Post on January 10, 2019, a former lawyer in the Justice Department's Office of Legal Counsel (OLC) wrote:

"[W]hen I was at OLC, I saw again and again how the decision to trust the president failed the office's attorneys, the Justice Department and the American people. The failure took different forms. Sometimes, we just wouldn't look that closely at the claims the president was making about the state of the world. When we did look closely, we could give only nudges. For example, if I identified a claim by the president that was provably false, I would ask the White House to supply a fig leaf of supporting evidence. Or if the White House's justification for taking an action reeked of unconstitutional animus, I would suggest a less pungent framing or better tailoring of the actions described in the order."

She further explained that she "occasionally caught [her]self fashioning a pretext, building an alibi" for the President's "impulsive decisions."

- a. If you are confirmed, what steps will you take to prevent the Office of Legal Counsel from retroactively justifying the President's decisions or policies based on a pretext or a fig leaf of evidence?

RESPONSE: I have no reason to believe that the premise of that article is correct. I have worked with the Office of Legal Counsel in this Administration, as well as in the Bush Administration, and in my experience, OLC has provided its best judgment of what the law requires. In addition, OLC's practice is to address legal questions prospectively, not retroactively.

- b. If you are confirmed and find that the Office of Legal Counsel has justified the legality of the President's decisions or policies based on a pretext or a fig leaf of evidence, will you agree to report such actions to the Senate Judiciary Committee?

RESPONSE: I have no reason to believe that the premise of your question is correct. If I am confirmed, however, the Department will work to meet the Committee's information and oversight needs, consistent with the Department's law enforcement, national security, and litigation responsibilities.

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR BOOKER

1. In our meeting prior to your appearance before the Senate Judiciary Committee, you indicated that the local contribution to the Gateway Tunnels was a problem. You have also previously been quoted saying that the Gateway projects “lack realistic plans and commitments.”

However, the project sponsors have included in the most recent New Starts application the following local funding sources, which comprise over 50 percent of the share of cost of the Gateway Tunnels:

- RRIF loan proceeds to be repaid by PANYNJ payments to GDC, \$2.140 billion
- RRIF loan proceeds to be repaid from New York State payments to GDC, \$1.736 billion
- RRIF loan proceeds to be repaid from NJT payments to GDC, \$1.474 billion
- RRIF loan proceeds to be repaid from local revenues, \$787.7 million
- GDC revenue from PANYNJ payments, \$269.8 million
- GDC revenue from New York State and NJT, \$524.2 million

Despite this \$6.933 billion local commitment to the project, why did you state in our meeting that the local commitment to the Gateway Tunnels was insufficient?

RESPONSE: Any details about this FTA Capital Investment Grant project relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT’s Office of Government Affairs.

2. Despite a stronger application, including the above specified funding sources, the Gateway Tunnels were given a medium-low rating from the Federal Transit Administration (FTA) in March 2019. Were any Department of Transportation political appointees involved in the decision to provide the Gateway Tunnels application a medium-low rating? If so, can you provide a detailed explanation of the role political appointees played in the technical review of the Gateway Tunnels application?

RESPONSE: Please see my response to Question 1(a) above.

3. In our meeting prior to your appearance before the Senate Judiciary Committee, you noted

that the Environmental Impact Statement (EIS) for the Portal North Bridge Project has been completed. In fact, the EIS was completed nearly two years ago, preconstruction activities have been funded, in large part, by a Transportation Investment Generating Economic Recovery (TIGER) grant that was completed earlier this year, and the project sponsors are prepared to move forward immediately to construction of the Portal North Bridge Project. Can you explain what is holding up this critical project?

RESPONSE: Please see my response to Question 1(a) above.

4. In 2018, project sponsors substantially improved the local commitment to the project by including the following local funding sources:
 - Congestion Mitigation and Air Quality Improvement (CMAQ) funds, \$81.59 million
 - Amtrak Contribution, \$21.0 million. This contribution is from Amtrak's FY 2018 capital budget
 - NJTTF, matching funds for CMAQ grant, \$20.4 million
 - NJEDA bonds, repaid by NJTTFA revenues, \$499.4 million
 - NJTTF revenues applied to NJEDA financing charges, \$208.4 million

Despite the \$830.83 million local commitment comprising over 50 percent of the cost of the Portal North Bridge Project, the FTA provided the Portal North Bridge application a medium-low rating in March 2019. This is particularly concerning given that the Portal North Bridge has previously been given a medium-high rating and the project sponsors made detailed changes to its application to address FTA feedback. What specific actions are you taking to ensure that this project begins construction immediately?

RESPONSE: Please see my response to Question 1(a) above.

5. What specific commitments can local sponsors make to the Portal North Bridge Project beyond what is in the 2018 application that would secure the full support of the Department of Transportation?

RESPONSE: Please see my response to Question 1(a) above.

6. Does your office have an estimation of the daily cost to taxpayers for delaying the Portal North Bridge Project, which has completed its pre-construction phase and is ready for construction?

RESPONSE: Please see my response to Question 1(a) above.

7. Despite the stronger application, including the previously mentioned specific funding

sources resubmitted by project sponsors in 2018, the Portal North Bridge Project was given a medium-low rating from the FTA. Were any Department of Transportation political appointees involved in the decision to provide the Portal North Bridge application a medium-low rating? If so, can you provide a detailed explanation of the role political appointees played in the technical review of the Portal North Bridge application?

RESPONSE: Please see my response to Question 1(a) above.

8. When the Portal Bridge swings open and fails to shut, it cripples the entire northeast corridor, causing delays from D.C. to Boston. The bridge is so old that workers have to use a mallet to force the bridge to lock back into place. In 1996, an Amtrak train derailed while crossing the Portal Bridge injuring over 40 people, causing the train to crash into the marshes of Secaucus, and millions of dollars in damage. The aging tracks were found to contribute to this terrible accident.

In 2005, a sparking wire set fire to the aging wood under the bridge, posing a threat to passengers and severely disrupting service throughout the Northeast Corridor. In 2014 the wood beneath the bridge caught fire, delaying dozens of trains for hours.

Do you agree that delaying the Portal North Bridge Project threatens public safety?

RESPONSE: Please see my response to Question 1(a) above.

9. The Portal Bridge and Hudson tunnels are single points of failure for 10 percent of our nation's GDP. If they were to completely fail in the coming years it would quickly lead to billions and billions of dollars draining from our economy and an unprecedented transportation nightmare. Do you believe that delaying construction of the Portal Bridge and Gateway Tunnels threatens the economic wellbeing of the northeast and the entire United States?

RESPONSE: Please see my response to Question 1(a) above.

10. In our meeting prior to your appearance before the Senate Judiciary Committee, you indicated that the EIS for the Hudson Tunnel Project was not complete due to a lack of funding from local sponsors. However, as you know, the Portal North Bridge's EIS was completed nearly two years ago despite not having secured a Full Funding Grant Agreement from the FTA. Funding through the FTA and finalizing the EIS through the Federal Railroad Administration (FRA) are separate processes. Can you explain why the Secretary's office, in coordination with the FRA have not provided a record of decision for the Hudson Tunnel Project EIS given that the local sponsors provided a final EIS to the FRA for approval in March 2018? Please be specific.

RESPONSE: Please see my response to Question 1(a) above.

11. Can you please provide me information regarding the volume of staff hours, the amount of work, and any challenges that the Department of Transportation has faced while trying to complete the EIS since the project sponsors submitted the EIS to the FRA over a year ago?

RESPONSE: Please see my response to Question 1(a) above.

12. Does your office have an estimation of the daily cost to taxpayers caused by the delay in finalizing the EIS for the Hudson Tunnel Project?

RESPONSE: Please see my response to Question 1(a) above.

13. Do you believe that the Department of Transportation's failure to finalize the Hudson Tunnel Project's EIS directly contradicts the administration's goal to reduce the amount of time it takes to complete the permitting and construction of infrastructure projects?

RESPONSE: Please see my response to Question 1(a) above.

14. If confirmed as Deputy Attorney General, you would be the number two official at the Department of Justice charged with overseeing the Federal Bureau of Investigation, the Drug Enforcement Agency, U.S. Attorneys, the Bureau of Prisons, the Criminal Division, the National Security Division, and many other critical entities. Notably, you have no criminal law experience. The last person to have no prosecutorial or Department of Justice experience to serve as Deputy Attorney General was Jamie Gorelick, who served in that position from 1994 to 1997. However, she did have national security experience having served as General Counsel of the Department of Defense prior to her appointment as Deputy Attorney General.

At your nomination hearing, Senator Coons pressed you on lack of experience.¹⁶ He asked you whether you “had any experience evaluating the legality of a wiretap or giving direction on what Bready material to disclose.”¹⁷ You replied that you had no experience relating to those matters. Senator Coons also noted that every Deputy Attorney General since 9/11 has had prosecutorial experience. With the creation of the National Security Division of the Department of Justice in 2005, the Deputy Attorney General's role expanded to include an extensive criminal and national security portfolio, encompassing critically important sections like counterterrorism, intelligence law, and foreign investment review.

- a. Why should members of this Committee not be concerned with your

¹⁶ *Nominations Hearing Before the Comm. on the Judiciary*, 116th Cong. (2019) (statement of Jeffrey Rosen, nominee to be Deputy Attorney General, U.S. Dep't of Justice).

¹⁷ *Id.*

lack of experience in criminal law and national security matters?

RESPONSE: As I discussed at my hearing, in my current position as the Deputy Secretary of Transportation, I serve as the chief operating officer of a federal cabinet department with a budget in excess of \$80 billion and more than 55,000 employees with important responsibilities regarding public safety and infrastructure funding, among other things. In addition, I had nearly 30 years of litigating complex cases all over the United States during my time at my former law firm, Kirkland & Ellis LLP, and I played a leadership role there as well.

If I am confirmed, I intend to learn from and draw upon the thousands of seasoned and experienced prosecutors at the Department of Justice. I believe my experiences demonstrate that I am qualified and able to manage the size of the Department's operations, and that I will utilize all of my resources, including those prosecutors with institutional knowledge, to decide difficult criminal law issues. Additionally, I was pleased to learn that the Committee received letters of support from more than forty former officials from the Department of Justice, including prosecutors and senior officials, and from several law enforcement organizations, including the Sergeants Benevolent Association, the National Fraternal Order of Police, and the National Association of Police Organizations, Inc.

- b. When you were asked to serve as Deputy Attorney General, did you hesitate to accept the position based on your lack of experience?

RESPONSE: No. As I said in my opening statement for the hearing, "I believe I can make a meaningful contribution to an institution that I regard as a cornerstone of our American system of government, and consider it both a duty and an honor to serve our country."

- c. You did not fully answer Senator Coons' question on this topic and I would like you to do so here. Please provide an explanation of your prior experience handling issues of national security law. If you have no relevant experience to point to, please explain at least five concrete steps you will take to prepare yourself to handle matters concerning national security.

RESPONSE: Please see my response to Question 5 from Ranking Member Feinstein and Question 2(b) from Senator Coons.

- d. Much of national security law involves determining how to prioritize critical values like privacy and the First Amendment while maintaining the nation's security. How will you ensure that the Department of Justice safeguards civil

liberties in this context?

RESPONSE: I am a strong defender of the First Amendment, and of the value of free speech and privacy. I am also acutely aware of the importance of protecting the American people from national security threats.

15. In 2012, you were Chief Legal Counsel to the Platform Committee of the Republican National Convention.¹⁸ The 2012 Republican Platform stated, “In addition to appointing activist judges, the current Administration has included an activist and highly partisan Department of Justice. With a Republican Administration, the Department will stop suing States for exercising those powers reserved to the States, will stop abusing its preclearance authority to block photo-ID voting laws, and will fulfill its responsibility to defend all federal laws in court, including the Defense of Marriage Act.”¹⁹

a. What role did you play in drafting the 2012 Republican Platform?

RESPONSE: Please see my response to Question 11(a) from Ranking Member Feinstein.

b. Do you believe the Department of Justice under the Obama Administration was activist and highly partisan? If so, please explain.

RESPONSE: I would like to see the Department of Justice respected as a guiding light with regard to the rule of law. If I am confirmed, I will work tirelessly to help the Attorney General lead and manage the Department of Justice towards that objective.

c. How did the Department of Justice under the Obama Administration abuse its preclearance authority?

RESPONSE: Please see my response to Question 15(a) above.

16. The 2012 Republican Platform also stated: “We support State laws that require proof of citizenship at the time of voter registration to protect our electoral system against a significant and growing form of voter fraud. . . . We call for vigorous prosecution of voter fraud at the State and federal level.”²⁰

a. What role did you play in drafting this statement in the 2012 Republican Platform?

¹⁸ SJQ at pp. 9-10.

¹⁹ 2012 GOP Platform at p. 25, 2012 GOP Platform

²⁰ *Id.* at 32.

RESPONSE: Please see my response to Question 15(a) above.

- b. What data did the Platform Committee of the Republican National Convention rely on to conclude that non-citizens form a “significant and growing form of voting fraud”? Please be specific and include the data relied upon to make that assertion. If you cannot point to data to support that assertion, are you personally willing to disavow that statement?

RESPONSE: Please see my response to Question 15(a) above.

17. According to the Justice Department’s website, the Civil Rights Division has filed *no* lawsuits to enforce Section 2 of the Voting Rights Act since President Trump took office. By comparison, the Civil Rights Division filed 5 such suits under President Obama, 15 under President George W. Bush, and 16 under President Clinton.

- a. Do you believe vigorous enforcement of the voting laws includes vigorous enforcement of Section 2 of the Voting Rights Act?

RESPONSE: If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, including through enforcement of Section 2 of the Voting Rights Act where warranted upon a thorough analysis of the facts and governing law.

- b. In 2017, the Department of Justice reversed the federal government’s position in *Veasey v. Perry*, which involved a challenge to what is often considered to be the nation’s strictest state voter ID law.²¹ The reversal came after the Administration had spent almost six years arguing that the Texas voter ID law intentionally discriminated against minorities.²² Even the Fifth Circuit Court of Appeals, one of the most conservative circuits in the nation, ruled that the Texas voter ID law discriminated against minority voters.²³

- i. Will you make a commitment to review the Department of Justice’s position in this case?
- ii. Will you report your conclusions to this Committee within the first 60 days of your tenure should you be confirmed?

RESPONSE: I understand from publicly available information that *Veasey v. Abbott* (formerly *Veasey v. Perry*) did not involve a change

²¹ Pam Fessler, *Justice Department Reverses Position on Texas Voter ID Law Case*, NPR (Feb. 27, 2017), <https://www.npr.org/2017/02/27/517558469/justice-department-reverses-position-on-texas-voter-id-law-case>.

²² *Id.*

²³ See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

in legal position by the Department. Rather, it involved a change in law by the Texas Legislature. In particular, in 2017 the Texas Legislature amended the challenged voter ID law to largely incorporate the interim remedy that the federal courts had put in place for the 2016 election. In its most recent decision in this case in 2018, the Fifth Circuit agreed with the Department of Justice that this amendment was sufficient to remedy the alleged defects in the original law.

18. Since the Supreme Court's decision in *Shelby County v. Holder*,²⁴ states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate a voter at the polls.²⁵ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.²⁶ Despite this, President Trump, without citation, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion? Please be specific.
- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?
- c. Do you believe that voter ID laws can disenfranchise otherwise eligible minority voters?
- d. Please provide an example of a voter ID law that you believe does not disenfranchise otherwise eligible minority voters.

RESPONSE: I have not studied these issues and therefore have no basis for reaching any conclusions regarding them. As I mentioned at my hearing, in a democracy like

²⁴ 570 U.S. 529 (2013).

²⁵ Justin Levitt, *The Truth About Voter Fraud*, BRENNAN CTR. FOR JUSTICE 6 (2007), <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

²⁶ Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast>.

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.

19. In the twenty-first century, voter ID laws are often considered the modern-day equivalent of poll taxes. These laws disproportionately disenfranchise people of color and people of lesser means.²⁷

- a. Do you agree that voter ID laws disproportionately disenfranchise people of color and people of lesser means? If not, how do you account for the statistical evidence to the contrary?
- b. Study after study has shown that in-person voter fraud is extremely rare.²⁸ Do you believe that in-person voter fraud is a widespread problem in American elections?

RESPONSE: Please see my response to Question 18 above.

20. When you were Chief Legal Counsel to the Platform Committee of the Republican National Convention, it took the following position on crime in the United States: “Liberals do not understand this simple axiom: criminals behind bars cannot harm the general public.”²⁹

- a. What role did you play in drafting this section of the Republican Platform?

RESPONSE: Please see my response to Question 15(a) above.

- b. Do you believe that locking more people up makes us safer?

RESPONSE: If confirmed, I will look forward to learning more about the statistical data available with regard to crime and crime rates.

- c. In your hearing you spoke about the importance of the First Step Act.³⁰ This legislation takes a meaningful first step to fix our broken criminal justice system and will release thousands of people in federal prisons who are there under draconian drug laws. Do you understand the how a broken and unfair criminal

²⁷ See, e.g., Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You're Poor, Black, Latino or Elderly*, Wash. Post (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html; Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355>.

²⁸ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

²⁹ GOP Platform, *supra* note 3, at 37.

³⁰ *Nominations Hearing*, *supra* note 1.

justice system actually makes us less, not more, safe?

RESPONSE: If confirmed, I look forward to working with relevant components to implement the First Step Act.

- d. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.³¹ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.³²
 - i. After reviewing these statistics, do you still believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain how you justify your views.
 - ii. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

RESPONSE: I have not had an opportunity to review these studies, and have no basis on which to reach a conclusion about them. If confirmed, I would look forward to reviewing statistical information regarding crime and crime rates.

- 21. According to a Brookings Institution study, blacks and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.³³ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.³⁴ These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.³⁵ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.³⁶
 - a. Do you believe there is implicit racial bias in our criminal justice system?
 - b. Do you believe people of color are disproportionately represented in our nation's

³¹ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

³² *Id.*

³³ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

³⁴ *Id.*

³⁵ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

³⁶ *Id.*

jails and prisons?

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.
- d. If you are not familiar with implicit racial bias – will you commit to complete implicit racial bias training within the first 30 days of your tenure at the Department of Justice should you be confirmed?

RESPONSE: I am not familiar with the Brookings Institution study you cite, and I have not studied the issue of implicit racial bias in our criminal justice system. But I believe in the equal protection of the laws, and if confirmed, I will work with the relevant components in the Department to understand racial disparities and what may contribute to them.

22. On May 10, 2017, Attorney General Sessions changed the Department of Justice’s charging and sentencing policy and directed all federal prosecutors to “pursue the most serious, readily provable offense.”³⁷ After this announcement, I wrote a letter with Senators Mike Lee, Dick Durbin, and Rand Paul asking a series of question regarding the policy change because we believed the new policy would “result in counterproductive sentences that do nothing to make the public safer.”³⁸

- a. If confirmed, will you review Attorney General Sessions’ decision to revert back to an old Department of Justice policy to “pursue the most serious, readily provable offense”?

RESPONSE: Please see my response to Question 2 from Senator Durbin.

- b. Will you make a commitment to conduct a review of the effect the new charging and sentencing policy is having on crime deterrence, public safety, and reducing recidivism and report your findings to the Senate and House Judiciary Committees?

RESPONSE: Please see my response to Question 22(a) above.

- c. The letter referenced above highlighted the cases of Weldon Angelos and

³⁷ Memorandum from Jeff Sessions, Att’y Gen., to the U.S. Dep’t of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

³⁸ Letter from Sen. Mike Lee et al. to Jeff Sessions, Att’y Gen., on the Department of Justice Charging and Sentencing Policy (June 7, 2016), <https://www.scribd.com/document/350652153/6-7-17-Letter-to-the-Attorney-General-on-DOJ-Charging-and-Sentencing-Policy-FINAL-SIGNED>.

Alton Mills.³⁹ Do you believe the punishment fit the crime in those two cases?

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

- d. If you are not familiar with those cases, do you commit to have the Department of Justice respond to the May 2017 letter regarding whether it believed the punishment fit the crime in those two instances?

RESPONSE: It is important to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to accommodate the Committee's information needs, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will be pleased to work with Congress through the Department's Office of Legislative Affairs to provide appropriate information.

- e. Will you make a commitment to conduct a review of all federal criminal offenses carrying mandatory minimum sentences and reporting to the Senate and House Judiciary Committees those that you believe are unfair and need adjustment?

RESPONSE: As with any proposed legislative changes to current criminal statutes, if confirmed, I would welcome the opportunity to work with Congress on improvements to our legal system.

- f. According to Attorney General Sessions's memorandum, "prosecutors are allowed to apply for approval to deviate from the general rule that they must pursue the most serious, readily provable offense."⁴⁰ Do you commit to providing the Senate and House Judiciary Committees information detailing the number of requests that have been made to deviate from the Department's charging policy and a breakdown of whether those requests were approved or denied?

RESPONSE: I understand that the Department works to accommodate the Committee's information and oversight needs, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will be pleased to work with Congress through the Department's Office of Legislative Affairs to provide appropriate information.

23. In 2015, the Presidential Task Force on 21st-Century Policing issued a report setting

³⁹ *Id.*

⁴⁰ Memorandum from Jeff Sessions, Att'y Gen., to the U.S. Dep't of Justice on the Department Charging and Sentencing Policy (May 10, 2017), <https://www.justice.gov/opa/press-release/file/965896/download>.

forth recommendations focused on identifying best practices for policing and recommendations that promote effective crime reduction while building public trust.⁴¹ Have you read the report? If not, do you intend to read the report?

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

24. Communities of color have the lowest rates of confidence in law enforcement. A poll from 2015-2017 indicated that 61 percent of whites had confidence in police, only 45 percent of Hispanics and 30 percent of blacks felt the same way.⁴² If confirmed as Attorney General, what policies and practices will you implement to rebuild trust between law enforcement and minority communities?

RESPONSE: Trust between communities and law enforcement is critical to combating crime and keeping people safe. If confirmed, I will ensure that the Department continues to implement policies and programs intended to enhance the trust between the police and the communities they serve, whether through the Office of Community Oriented Policing Services, training and technical assistance provided by the Office of Justice Programs, or through national programs like the reinvigorated Project Safe Neighborhoods initiative, which brings together communities and all levels of law enforcement to collaboratively develop comprehensive strategies tailored to local violent crime conditions, issues, and resources. Collaborative approaches, where law enforcement and communities work together, will help build trust and make communities across the country safer for everyone.

25. The Deputy Attorney General oversees the Office of Legal Policy (OLP) at the Department of Justice. OLP plays a critical role in the selection of judicial nominees.

- a. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

RESPONSE: While I think all people should be treated as individuals, I agree it is a desirable outcome to have a diverse judicial branch.

- b. Do you believe the Trump Administration has done a good job appointing people of color to the federal bench? If so, please explain your views.

RESPONSE: While I am not familiar with the current judicial-selection process, it is my understanding that the Trump Administration has sought to

⁴¹ FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST-CENTURY POLICING (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁴² Jim Norman, *Confidence in Police Back at Historical Average*, GALLUP (July 10, 2017), <https://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx>.

have a judiciary that reflects our nation's diversity in its many forms.

26. On April 6, 2018, Attorney General Sessions announced a “zero tolerance” policy for criminal illegal entry and directed each U.S. Attorney’s Office along the Southwest Border to adopt a policy to prosecute all Department of Homeland Security referrals “to the extent practicable.”⁴³ A month later, on May 7, 2018, the Trump Administration announced that the Department of Homeland Security will refer any individuals apprehended at the Southwest Border to the Department of Justice.⁴⁴ This policy resulted in thousands of immigrant children being cruelly separated from their parents.⁴⁵

- a. Do you agree with Attorney General Sessions’s decision to institute a “zero tolerance” policy?

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

- b. Do you believe it is humane to separate immigrant children and their parents after they are apprehended at the U.S.-Mexico border?

RESPONSE: The President made it clear in his June 20, 2018 Executive Order that families should be kept together to the extent practicable.

27. On September 27, 2016, I sent a letter to then-Secretary Jeh Johnson opposing family detention and urging the Obama Administration to end its use of the practice.⁴⁶ The letter said, “Detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means.”⁴⁷ The letter also noted that “[t]here is strong evidence and

⁴³ Press Release, U.S. Dep’t of Justice, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>.

⁴⁴ Jeff Sessions, Att’y Gen., Remarks Discussing the Immigration Enforcement Actions of the Trump Administration (May 7, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

⁴⁵ Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX (June 15, 2018) <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

⁴⁶ Letter from Sen. Patrick Leahy et al. to Jeh Johnson, Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 27, 2016), <https://www.leahy.senate.gov/imo/media/doc/Letter%20to%20Sec.%20Johnson%20re%20Berks%20Family%20Detention%20Center.pdf>.

⁴⁷ *Id.*

broad consensus among health care professionals that detention of young children, particularly those who have experienced significant trauma as many of these children have, is detrimental to their development and physical health.”⁴⁸

- a. Do you agree that detention of families should only be used as a last resort, when there is a significant risk of flight or a serious threat to public safety or national security that cannot be addressed through other means?
- b. Do you believe that detention of children—regardless of whether it is with or without their parents—has a detrimental effect on their development and physical health?

RESPONSE: My understanding is that the Department of Homeland Security makes the decision as to who they are going to apprehend, who they are going to refer for criminal prosecution, and who they will hold—subject to applicable law. I cannot comment on matters within the purview of the Department of Homeland Security. It is also my understanding that part (a) of your question is a subject that is presently in ongoing litigation. While I am not involved in that litigation, it is the longstanding policy of the Department of Justice to not comment on pending matters, and thus it would not be appropriate for me comment on this matter.

28. The 2012 Republican Platform said, “We support changing the way that the decennial census is conducted, so that citizens are distinguished from lawfully present aliens and illegal aliens. In order to preserve the principle of one-person, one-vote, the apportionment of representatives among the States should be according to the number of citizens.”⁴⁹

Census experts and senior Census Bureau staff agree that a last-minute, untested citizenship question could create a chilling effect and present a major barrier to participation in the 2020 Census. Many vulnerable communities do not trust the federal government’s commitment to maintaining the confidentiality of Census data and are fearful that their responses could be used for law enforcement, including immigration enforcement, purposes. A citizenship question would exacerbate their concerns.

Alarming documents revealed in the ongoing citizenship-question litigation indicate that DOJ staff were open to reevaluating a formal Justice Department legal opinion from 2010 that there are no provisions within the USA PATRIOT Act that can be used to compel the Commerce Secretary to release confidential census information—that is, that supersede the strict confidentiality protections in the Census Act. In November, I joined my colleagues

⁴⁸ *Id.*

⁴⁹ GOP Platform, *supra* note 3, at 12.

Senator Schatz and Senator Reed in a letter to Assistant Attorney General Eric Dreiband, seeking a clarification of the existing law, a commitment to maintaining the confidentiality of information collected by the Census Bureau, and assurances that personal Census responses cannot be used to the detriment of any individual or family, by the Justice Department, the Department of Homeland Security, or any other agency of government at any level.

Although litigation has continued for months, a federal district court issued an exceptionally thorough and thoughtful ruling that blocked the Commerce Department from adding the citizenship question to the Census.

- a. What role did you play in drafting this portion of the 2012 Republican Platform?

RESPONSE: Please see my response to Question 15(a) above.

- b. Do you agree that the confidentiality of Census data is fully protected by law?

RESPONSE: I am not familiar with this issue but, if confirmed, will look forward to analyzing it and working to ensure that all of our federal laws are enforced properly.

- c. Will you make a commitment that, if confirmed, you will ensure the Justice Department abides by all laws protecting the confidentiality and nondisclosure of Census data, and that you will prohibit the use of Census data for the purposes of immigration-related enforcement against any person or family?

RESPONSE: Please see me answer above 28(b).

- d. Will you make a commitment that, if confirmed, you will reaffirm the Office of Legal Counsel's interpretation that the USA PATRIOT Act does not weaken or change any confidentiality protection embodied in the Census Act?

RESPONSE: It is my understanding that this matter is the subject of ongoing litigation. While I am not involved in that litigation, it would not be appropriate for me to comment on this matter.

29. At the hearing, you disagreed with the New York Times' characterization that were a "chief author" of the proposal to roll back the Obama Administration's Corporate Average Fuel Economy (CAFE) standard rule.⁵⁰ Instead, you described yourself as playing more of a "managerial" role in the promulgation of the proposed freeze of the CAFE standards—in contrast to statements from 11 sources which said you were an

⁵⁰ Coral Davenport, *Top Trump Officials Clash Over Plan to Let Cars Pollute More*, N.Y. TIMES (Jul. 27, 2018), <https://www.nytimes.com/2018/07/27/climate/trump-auto-pollution-rollback.html>.

advocate and drafter of the proposal.⁵¹

- a. What exactly was your role with regard to the Trump Administration's proposed CAFE standards?

RESPONSE: As Deputy Secretary of Transportation, my overall role has been to serve as the Department's Chief Operating Officer and assist the Secretary in carrying out her duties in overseeing the Department's Operating Administrations and more than 50,000 employees. The proposed SAFE Vehicles Rule was jointly published by DOT's NHTSA and the EPA on August 24, 2018, at 83 Fed. Reg. 42986-43500 (Aug. 24, 2018). Any details about the rulemaking relate to oversight of the Department of Transportation, and not to the role I would have at the Department of Justice. In view of your interest in this issue, I will be pleased to refer your inquiry to DOT's Office of Government Affairs.

- b. Recent reporting has detailed the mathematical errors and calculation mistakes—all resolved in favor of rolling back the standard—rife in the Trump Administration's justification for freezing the fuel economy standards. In comments submitted to the Office of Management and Budget and the Department of Transportation about these proposed changes, the Environmental Protection Agency (EPA) stated, "EPA analysis to date shows significant and fundamental flaws" that "make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards."⁵² Why were the extensive errors flagged by the EPA not addressed?

RESPONSE: Please see my response to Question 15 from Ranking Member Feinstein.

30. In response to the Supreme Court's mandate in *Massachusetts v. EPA* that the EPA must regulate greenhouse gases, the EPA made an "endangerment finding" that carbon dioxide is a threat to human welfare. When the EPA sent this endangerment finding to OMB—where you were General Counsel—"OMB staff refused to open it, and it sat in limbo for months."⁵³ Beyond just ignoring the finding, the Bush Administration "walked a tortured policy path, editing its officials' congressional testimony, refusing to read documents prepared by career employees and approved by top appointees, [and] requesting changes

⁵¹ *Id.*

⁵² Letter from Sen. Tom Carper, Ranking Member, U.S. Senate Comm. on Env't & Pub. Works, to Sec'y Elaine L. Chao, U.S. Dep't of Transp. & Andrew Wheeler, Acting Adm'r, Env'tl. Prot. Agency (Oct. 16, 2018), https://www.epw.senate.gov/public/_cache/files/e/6/e66d6d50-e3c5-42c1-9663-c1ea1d2215dc/3752E5E73547A5D722D1BEADA0E69405.10.16.2018-cafe.pdf.

⁵³ Juliet Eilperin & R. Jeffrey Smith, *EPA Won't Act on Emissions This Year*, WASH. POST (July 11. 2008), http://www.washingtonpost.com/wpdyn/content/article/2008/07/10/AR2008071003087_pf.html.

in computer models to lower estimates of the benefits of curbing carbon dioxide. . . .”⁵⁴

- a. In your assessment, is climate change real?

RESPONSE: As I have said many times, I support protecting our environment. With regard to the environment generally, and climate change in particular, I am strongly in favor of the use of science, the scientific methods, and empirical measures and data.

- b. In your assessment, what is the relationship between human activities, particularly greenhouse gas emissions, and climate change?

RESPONSE: Please see my response to Question 30(a) above.

- c. In your assessment, can efforts to reduce greenhouse gas emissions today have an impact on climate change?

RESPONSE: Please see my response to Question 30(b) above.

- d. If a corporation has contaminated the environment and jeopardized the public health of an American community, should residents of that community be able to seek justice in our courts?

RESPONSE: Please see my response to Question 1(c) to Senator Leahy.

- e. Research has shown that climate change disparately impacts poor communities⁵⁵ and indigenous communities.⁵⁶ Do you agree? Have you ever studied the issue?

RESPONSE: I have not studied this issue and am not in a position to comment further.

⁵⁴ *Id.*

⁵⁵ Maxine Burkett, *Behind the Veil: Climate Migration, Regime Shift, and a New Theory of Justice*, 53 Harv. C.R.-C.L. L. Rev. 445, 447 (Fall 2018).

⁵⁶ Rebecca A. Tsosie, *Indigenous People and Environmental Justice: The Impact of Climate Change*, 78 U. Colo. L. Rev. 1625, 1628 (Fall 2007).

QUESTIONS FOR THE RECORD
JEFFREY A. ROSEN
NOMINEE TO BE UNITED STATES DEPUTY ATTORNEY GENERAL

QUESTIONS FROM SENATOR HARRIS

1. On March 25, the Justice Department changed its position in a case challenging the Affordable Care Act, and is now arguing that the entire law should be struck down. If the court adopts the Justice Department's position, the results would be devastating for all those who benefit from the Affordable Care Act. Nearly 20 million Americans could lose their health insurance. Protections for pre-existing conditions would be eliminated. And seniors would pay more for prescription drugs.

In 2009, you referred to the Affordable Care Act as a "proposed government takeover of health care." You also served on the Advisory Board of the National Federation of Independent Business when that organization was the lead plaintiff challenging the Affordable Care Act.

- a. Given your opposition to the ACA and your prior board service for a litigant, will you commit to consulting with career ethics officials at the Justice Department to determine whether to recuse yourself from the pending challenge to the Affordable Care Act?

RESPONSE: Please my response to Question 8(b) from Ranking Member Feinstein.

- b. If career DOJ officials recommend that you recuse, will you commit to following their recommendation?

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.

2. For 50 years, the Voting Rights Act has protected against racial discrimination in voting. Section 2 of the Voting Rights Act prohibits states from implementing racially discriminatory voting practices.

During the 2018 midterms, we saw several instances of voter suppression. In Georgia, the Republican candidate for governor remained in his position as secretary of state—the office that oversees state elections. The Republican candidate then used his position as secretary of state to issue directives that could have tilted the election in his favor.

- a. If confirmed, will you commit to investigating this event to determine whether it warrants Section 2 enforcement or any other type of enforcement?

RESPONSE: I have always supported equal protection under the law. If confirmed, I will be committed to protecting and upholding the civil rights and voting rights of all Americans. As with all matters, any recommendations regarding whether to investigate and whether to bring Section 2 enforcement actions will be based on an analysis of the facts and the governing law.

- b. If you find that Section 2 does not apply, will you commit to working with me to determine whether the statute should be amended—or a new one passed—to address this type of scenario?

RESPONSE: Please see my response to question 2(a) above.

In North Dakota, new voter ID rules required voters to show that they had a current residential address. Since many Native Americans use P.O. boxes instead of residential addresses, this meant that many Native IDs were not accepted at polling places.

- a. If confirmed, will you commit to reviewing North Dakota’s voter ID law to determine whether it warrants Section 2 enforcement?

RESPONSE: Please see my response to question 2(a) above.

3. During Attorney General Barr’s confirmation hearing, he referred to extreme risk protection laws as “the single most important thing we can do in the gun control area to stop these mass shootings from happening in the first place.”

- a. Do you agree with Attorney General Barr’s support for extreme risk protection laws?

RESPONSE: I support the Attorney General’s commitment to using all the tools at the Department’s disposal to ensure that due process rights are respected and that firearms do not end up in the hands of dangerous people prohibited by law from having them.

- b. If confirmed, will you request that the Justice Department support Senator Feinstein’s Extreme Risk Protection Order Act of 2019?

RESPONSE: I understand the desire to find mechanisms both to protect due process and other constitutional rights and to prevent violence when there are signs that someone may be a danger to themselves or others. I am aware

of state ERPO laws, but am not yet familiar with Senator Feinstein's legislation. If I am confirmed, I would look forward to working with Congress on this important issue.

4. Last year, the administration released the Fourth National Climate Assessment, which concluded that "the evidence of human-caused climate change is overwhelming and continues to strengthen, that the impacts of climate change are intensifying across the country, and that climate-related threats to Americans' physical, social, and economic well-being are rising."

Since 2012, you have been a member of the National Association of Scholars, an organization that has questioned the scientific consensus on climate change. Do you accept the scientific consensus that human-caused climate change is real and that we are already experiencing its impacts?

RESPONSE: Please see my response to Question 7 from Ranking Member Feinstein.

5. On his last day as Attorney General, Jeff Sessions issued a memo making it more difficult for Justice Department attorneys to obtain consent decrees. During Attorney General Barr's confirmation hearing, he committed to convening a meeting with civil rights groups to listen to their concerns about the Justice Department's current policy within 120 days. It is my understanding that the meeting has still not occurred. If confirmed, will you commit to joining this meeting and ensuring that it takes place by the June 14 deadline?

RESPONSE: Because I am not currently at the Department, I am not familiar with the status of this meeting request. However, if confirmed, I look forward to working with the Civil Right Division and others to address this issue.

6. In 2012, you served as Chief Legal Counsel to the Republican National Convention's Platform Committee. That year, the Republican National Convention included platform language supporting a "human life amendment to the Constitution," also known as a personhood amendment. So-called personhood measures provide that pregnancy begins at conception. If adopted, such an amendment could effectively overturn *Roe v. Wade* and ban many common forms of birth control. Will you commit that, if confirmed, you will not seek to overturn *Roe* and *Casey*?

RESPONSE: Please see my response to Question 10 from Ranking Member Feinstein.