January 27, 2019

The Honorable Lindsey 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, as well as Senators Grassley, Cornyn, Tillis, Crapo, Kennedy, Leahy, Durbin, Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, and Harris, following my appearance before the Senate Committee on the Judiciary on January 15, 2019.

Sincerely,

William P. Barr

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

QUESTIONS FROM SENATOR GRASSLEY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Over the years, Congress has appropriated billions of dollars to be used for DOJ grants. These grants are then awarded by DOJ to fund state, local, and tribal governments and nonprofit organizations for a variety of important criminal justice-related purposes. However, at times there have been reports of duplicative grant programs, as well as fraud and abuse.

    a. If confirmed, will you commit to working with this committee to remove these duplicative programs as well as root out waste, fraud, and abuse in DOJ grant programs?

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

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

    a. What do you see as an effective way to address the increasing number of synthetic analogues that enter our country?

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

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

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

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

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

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

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

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

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

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

    a. What is the status of this request?

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

b. What is the anticipated date of completion?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

    a. If confirmed, will you ensure DOJ continues this work in protecting class members from unfair settlements?

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

20. Every day, the Americans with Disabilities Act (ADA) protects countless individuals with disabilities, ensuring physical access to "any place of public accommodation." For this critically important law to be effective, however, it must be clear so that law abiding Americans can faithfully follow the law. Currently, there is confusion over whether the ADA applies to websites, and if so, what standards should be used to determine website compliance. This lack of clarity benefits only the trial lawyers, and does nothing to advance the cause of accessibility.

    a. If confirmed, will you commit to promptly take all necessary and appropriate actions—including filing statements of interest in pending litigation—to help resolve the current uncertainty?

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

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

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

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

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

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

QUESTIONS FROM SENATOR CORNYN

1. In your testimony, you discussed "red flag laws" and the concept of Extreme Risk Protection Orders (ERPOs) as a possible means of keeping firearms out of the hands of dangerously mentally-ill individuals. Of course that is a goal we all share. As I'm sure you are aware, several states have enacted ERPO laws to date; however, these laws have included varying levels of due process protections, some of which have been subject to abuse. As a result, this issue has become a cause of concern for many law-abiding gun owners. Would you agree that at a minimum, state ERPO laws should include robust front-end due process protections, penalties against the filing of frivolous charges, and mental health treatment for those who pose a significant danger to themselves or others?

   RESPONSE: As I testified during my hearing, it is critical that we get an effective system in place that keeps firearms out of the hands of mentally ill people who pose a danger to themselves or others. A key part of any such system are laws that allow "Extreme Risk Protection Orders" to be obtained in appropriate circumstances. At the same time, we must take steps to ensure that any laws that restrict possession of firearms by law-abiding persons, even if only temporarily, conform to constitutional rights and standards – including those embodied in the Second, Fifth, and Fourteenth Amendments. To the extent that these laws also incorporate features that minimize the likelihood of their abuse, I would support that approach as well.

2. In your testimony, you stated that you have opposed bans on certain semi-automatic firearms (often misnamed as "assault weapons"). You also stated your long standing belief that the Second Amendment guarantees the fundamental, individual right to keep and bear arms for all law-abiding Americans - a belief that predates the Supreme Court's Heller and McDonald decisions. You also mentioned that, in looking at firearms regulations, it is appropriate to consider whether the burden on law-abiding individuals is proportionate to any general benefit to public safety. Would you further clarify that last statement, in light of Justice Scalia's holding in Heller, that the enumeration of the Second Amendment right "takes out of the hands of government the power to decide whether the right is really worth insisting upon"?

   RESPONSE: When I was the Assistant Attorney General of the Office of Legal Counsel, I concluded that the Second Amendment creates a personal right under the Constitution. My analysis drew in part on the right of self-preservation set forth in John Locke's Second Treatise of Government. I was pleased to see that *Heller* vindicated my view, and there is no question following *Heller* that the right to keep and bear firearms is protected under the Second Amendment and that this is a personal right. As I stated during my hearing, what I would look for in assessing a gun-control measure is what burden it would impose on the constitutional rights of

law-abiding citizens and whether that burden has a sufficiently meaningful impact on crime to justify burdening a fundamental right. I would not favor pursuing gun-control measures that burden the Second Amendment rights of law-abiding citizens without having any meaningful impact on crime or public safety.

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

QUESTIONS FROM SENATOR TILLIS

Technology and Law Enforcement

1. It is increasingly clear that technology provides very useful tools in crime fighting and crime prevention, especially when they are in an integrated system. I would like to see Federal support for the deployment of these technologies increased. Most gunshot incidents, for example, go unreported to the police. Gunfire detection and location technology, where it has been deployed, and that includes some communities in my state, has helped police respond to more gunshot incidents, and in a safer and timely way. This enables police to collect the shell casings, interview witnesses, and occasionally catch a fleeing suspect. When those shell casings are run through another technology, the National Integrated Ballistic Identification System – NIBIN – law enforcement agencies can determine if the gun has been used in other crimes and can focus their investigation. The use of cameras in public spaces is another positive tool. Will you support increased Federal support to assist localities to deploy these kinds of technologies?

   RESPONSE: Although I am not fully versed in current law enforcement technologies, I generally appreciate and understand the great benefits they can provide to law enforcement and would work to support their use where appropriate and consistent with law. Because I am not familiar with the Department's current budget and funding requests and allocations, I do not have sufficient information to commit to specific financial support from the Department for our local and state partners to expand use of these technologies. If confirmed, I look forward to learning more about this issue.

Digital Evidence in Support of Criminal Investigations

2. Access to digital evidence has grown increasingly important in investigations and prosecutions of criminal cases at the local, state, and federal levels. Investigators increasingly obtain data from mobile communications devices, social media accounts, internet browsing histories, and myriad other data sources to help them generate leads, identify suspects, and build their cases. Yet, as the Center for Strategic and International Studies (CSIS) recently reported, law enforcement agencies are facing significant challenges impeding their ability to effectively access digital evidence to support criminal investigations.

   The CSIS report found that nearly one-third of law enforcement professionals cited difficulties in identifying which service providers had access to digital evidence as their

largest challenge, followed by difficulties in obtaining evidence from providers, and a lack of resources needed to access and analyze data from devices.

a. As Attorney General, what steps will you take to promote digital evidence training programs for federal, state and local law enforcement officers?

RESPONSE: I am not familiar with the specific CSIS report you cite, but generally understand the importance of accessing digital evidence in criminal investigations and would support digital evidence training programs consistent with available resources. However, because I am not familiar with the Department's current budget and funding requests and allocations, I do not have sufficient information to commit to the specific steps I would take to support such training.

b. Will you conduct a review of existing programs to promote digital evidence training and report back to this Committee on those efforts and any steps that can be taken to improve them?

RESPONSE: If confirmed, I will review the issue of support for digital evidence training along with other issues affecting public safety, and would look forward to working with the Committee.

Combatting Sexual Exploitation

3. I'm concerned that the Department of Justice—which has the legal authority to prosecute internet based platforms which promote prostitution and facilitate sex trafficking—rarely does so. While it is encouraging that DOJ finally cracked down on certain bad actors last year, these actions came years too late for many victims of sex-trafficking.

a. What steps will you take to continue the Department's work to prosecute existing internet based platforms that promote prostitution and sex-trafficking?

RESPONSE: As I noted at my hearing, Internet-based platforms and other emerging technologies that facilitate sex trafficking, prostitution, and human trafficking are a particularly abhorrent form of criminality. If confirmed, Americans can count on me examining this issue closely to learn more about the Department's current efforts and to ensure that appropriate steps are being taken to address this scourge.

b. What will you do as Attorney General to anticipate and crack down on emerging technologies used by sexual exploiters to engage in prostitution and human trafficking?

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

c. What protective measures can you take to increase federal, state and local law enforcement's understanding of emerging modalities of sexual exploitation?

RESPONSE: State and local investigators and prosecutors have an important role to play in addressing this terrible problem. If confirmed, I will ensure that the Department is appropriately collaborating with state and local officials to effectively pursue sexual exploitation crimes. With regard to federal enforcement, please see my response to Question 3(a) above.

d. How can the Department of Justice better coordinate and collaborate with social media companies to eradicate criminal exploitation that may be occurring on their platforms?

RESPONSE: Because I am not currently at the Department, I am unaware of the degree and nature of federal coordination and/or collaboration with social media companies on these issues. Given the role of Internet-based platforms in facilitating such activities, social media companies do have a responsibility to help us address the problem. If confirmed, I will ensure that the Department is appropriately working with social media companies to seek the most effective response.

4. For the last few decades the federal government has made a concerted effort to fight sex trafficking. We've taken steps to protect victims and help them escape sexual exploitation. We've also cracked down on sex traffickers, enhancing criminal penalties for sex trafficking and providing the Department with more tools and resources to prosecute them.

   Unfortunately, one thing we haven't done well is focus on prosecuting those who solicit and purchase sex. In recognition of this, last year, Congress passed the Abolish Human Trafficking Act of 2017, which requires the Department to create a national strategy to reduce demand for human trafficking victims. The law also requires the Department to issue guidance urging Department components to prosecute those who purchase sex from minors and trafficking victims.

   a. Will you commit to finalizing and issuing the guidance required by the Abolish Human Trafficking Act of 2017?

      RESPONSE: If confirmed, I will ensure that the Department complies with any statutory requirements, including in this area.

   b. How will you increase Department efforts to crack down on those who purchase sex commercially?

RESPONSE: Because I am not currently at the Department, I am not familiar with the Department's current efforts in this area. Sex trafficking and sexual exploitation are important problems that need to be addressed and that I intend to examine closely if confirmed.

c. Will you direct DOJ's criminal division to provide technical and, to the extent allowed by law, financial support to state and local law enforcement efforts aimed at prosecuting commercial sex buyers?

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

International Parental Child Abduction

5. Every year, hundreds of American-citizen children are abducted to a foreign country by one of their parents. These children are usually taken from the parent who has custody by their ex-spouse. The federal government has several tools to combat international parental child abduction but as Senator Feinstein and I noted in a letter to Secretary Pompeo, we rarely if ever use all of these tools. One of the most underused tools is prosecution of the taking parent—and their accomplices—under the International Parental Kidnapping Crime Act. That law makes it a federal crime to remove an American-citizen child from the United States with intent to obstruct custodial rights and individuals can face up to 3 years in prison for violations of its provisions.

   According to conversations my office has had with victim-advocates, it appears the Department rarely prosecutes individuals under the IPKCA.

   a. As Attorney General, will you commit to prosecuting those who commit and assist in international parental child kidnapping to the fullest extent allowed by law?

      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 ensure that the Department is taking appropriate steps to combat it.

6. Another complaint victims have brought to my attention is the general lack of knowledge about this issue from federal, state and local law enforcement. Many law enforcement officers don't even realize a parental kidnapping is a crime. As Attorney General, what will you do to provide better training and information to federal, state and local law enforcement officers? Specifically, what can or will you do to teach our law enforcement officers about how the potential for prosecution under the IPKCA can be both a deterrent and remedy for international parental kidnapping?

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

Intellectual Property

7. I'd like to commend President Trump and former Attorney General Jeff Sessions for their commitment to protecting the intellectual property rights of American innovators. Domestically and internationally intellectual property crime is on the rise. Intellectual property crime not only threatens our nation's economic health and well-being, but it also poses a national security risk. Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim (DEL RA HEEM) have made great strides in prosecuting intellectual property theft. If confirmed as Attorney General, what will you do to continue the efforts of General Sessions, Deputy Attorney General Rosenstein and Assistant Attorney General Delrahim?

   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 ensure the Department continues to combat these significant harms.

8. As you know, certain countries have been more egregious in their theft of American intellectual property. China is perhaps the most notorious, but India, Brazil and Russia are also bad actors. How will you approach international intellectual property theft and work with your foreign counterparts to preserve and protect the property rights of American innovators?

   RESPONSE: I understand that the Department works with our law enforcement counterparts across the globe to ensure they are prepared to address crimes involving intellectual property, cyber intrusions, and digital evidence. In addition, prosecutors in the Criminal, Civil and National Security Divisions work closely with U.S. Attorneys' Offices throughout the country on a wide range of cases involving foreign theft of intellectual property. If confirmed, I will examine these and other efforts to ensure that the Department is effectively building relationships with foreign partners to counter foreign threats to our intellectual property.

9. Does the Department need additional tools, resources or legal authorities to better combat international IP crime?

   RESPONSE: I appreciate your interest in this important area, which is vital to protecting American interests here and abroad. If confirmed, I look forward to working with you on ways to enhance the Department's current enforcement efforts on international IP theft.

Faith Based and Community Organization Partnerships in the Bureau of Prisons

10. The BOP recently reported over 16,000 prisoners were on a wait-list for basic literacy programs. The First Step Act will provide some funding to support prison programming, but there is also a lot of room for greater partnership with volunteer faith-based and community-based groups that provide programming without government funding.

    a. How will you go about ensuring there is a focus on increasing the number and quality of programs available through partnerships with programs that do not take direct funding from the government?

    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. Will you encourage in-prison programs proven to reduce recidivism offered by faith-based organizations to be considered as a reentry program in addition to being offered through the chaplaincy? (Background: Currently, faith-based organizations are generally only considered for programming under the chaplaincy by the BOP. The chaplaincy has strict limits on the number of volunteers and hours provided by each faith tradition, even if the program is holistic, offering more than explicitly religious activities, open to prisoners of any faith, and does not take any government funding. The First Step Act states that the AG shall inform the BOP that faith-based programs proven to reduce recidivism shall qualify as a reentry program outside the chaplaincy).

    RESPONSE: While I am aware generally of this provision within the FIRST STEP Act, I am not currently at the Department, and I am not familiar with details regarding how this provision can best be legally effectuated by the Bureau of Prisons. If confirmed, I look forward to learning more about the provision and its implementation to ensure compliance with applicable law.

11. The Second Chance Act provided that, "any person who provides mentoring services to an incarcerated offender is permitted to continue such services after that offender is released from prison." The First STEP Act expands that provision stating that a prisoner in prerelease custody may not be prohibited from receiving mentoring, reentry or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated. "Reentry or spiritual services" was inserted because many people leaving prison without much family support have worked closely with chapel and other faith-based volunteer mentors. These volunteers are in a place to encourage them through the difficult reentry process.

    But BOP policies currently only allow specially trained mentors to remain in contact with parishioners after they release. Will you shepherd the implementation of this part of this

new law, ensuring that the chapel and other faith-based volunteers are able to play a critical role in the reentry process of the men and women they have come to know and care about?

RESPONSE: While I am aware generally of this provision within the FIRST STEP Act, I am not currently at the Department, and I am not familiar with the details regarding volunteer services for inmates in pre-release custody. It is my understanding that BOP program considerations that might be affected include contracts with Residential Reentry Centers as well as public safety considerations. If confirmed, I look forward to learning more about the provision and its implementation to ensure compliance with law.

Bureau of Prisons Director

12. Director: The federal prison system has been without a permanent director since May of last year. The Attorney General is responsible for hiring this non-political position. Given the mandates on the federal prison system obligated under the newly passed First Step Act, how would you prioritize the hiring for this position and what qualities would you look for in a candidate?

RESPONSE: If confirmed, I will be committed to finding high-quality candidates to serve in the Department of Justice and ensuring the Department's staffing decisions are made with integrity and without political, ideological, or any other prohibited consideration and consistent with civil service law and Departmental policies. It is my understanding that the Director position at the Bureau of Prisons has been open for some time. I believe it is important to fill this position, particularly in light of the recently-passed FIRST STEP Act, and I will make it a priority to do so.

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

QUESTIONS FROM SENATOR CRAPO

Operation Choke Point was an Obama-era initiative that targeted "high risk" industries and prevented them from fully participating in the economy. Employees of the DOJ coordinated with federal bank examiners to press financial institutions who provided financial services to certain targeted industries (including firearms and ammunition) to end these relationships. This program effectively operated as an end-run around the Second Amendment. Some Idaho businesses were directly impacted by this effort.

In July 2017, Senator Tillis and I sent a letter to your predecessor, then-Attorney General Sessions, requesting a review of all options available to ensure lawful businesses are able to continue to operate without fear of significant financial consequences, and asked for a statement ensuring that Operation Choke Point would no longer be in effect. We received a commitment from the Department that it had ended Operation Choke Point. Last November, my republican Banking Committee colleagues and I wrote FDIC Chairman Jelena McWilliams to again confirm that banks are not cutting off lawful businesses simply because they were viewed as unfavorable by certain administrations.

1. Do you believe Operation Choke Point was inappropriate and should not have been initiated?

   RESPONSE: I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media, but I do not believe the Justice Department should operate programs aimed to cut off access to payment systems and banking services for merchants because they conduct business in politically disfavored industries.

2. Will you commit to review whether DOJ has actually ended Operation Choke Point?

   RESPONSE: Yes.

3. Will you assure that, if confirmed, you will not resurrect Operation Choke Point or any other program aimed to cut off access to payment systems and banking services for merchants in politically disfavored industries?

   RESPONSE: Yes. Please also see my responses to Questions 1 and 2 above.

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

QUESTIONS FROM SENATOR KENNEDY

1. The 2014 Supreme Court Case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc*., addressed the use of disparate-impact as a theory for determining discriminatory practices. While the case addressed the Fair Housing Act, the analysis has applicability to the Equal Credit Opportunity Act and the banking regulators' use of disparate impact as a theory for determining discriminatory practices. The Court held that a disparate impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing the disparity.

   The Department of Justice's 1996 memorandum on identifying lender practices that may form the basis of a pattern or practice referral remains in effect. The memo references a de minimis violation, which would be of pattern or practice referral that would return the investigation from the DOJ back to the referring agency. Will you commit, upon your confirmation, to expeditiously update the 1996 guidance and clarify what the DOJ views to be a de minimis violation?

   RESPONSE: I am not aware of this memorandum and have not studied this issue. Therefore, I have no basis to reach a conclusion regarding it. If confirmed, I commit to studying this issue in greater detail.

2. President Trump just signed my bill called the JACK Act (Justice Against Corruption on K Street) into law. This bill requires lobbyists convicted of bribery, extortion, fraud and embezzlement to disclose it. The law falls short of prohibiting corrupt lobbyists from lobbying the government. Would you support a full prohibition on lobbying by those convicted of these crimes?

   RESPONSE: The Department has long been committed to ensuring that our political process is free from corruption, including by lobbyists and other advocates. I am not familiar with the specific details of this new law and have not thought in detail about whether those convicted of corruption offenses could be banned from lobbying activities. If confirmed, I would be happy to work with you and the Committee on appropriate legislation that supports the Department's mission and priorities.

3. Last time you were here, you said in your hearing you would be in favor of an amendment banning certain types of semiautomatic rifles. You also said you "would prefer a limitation on the clip size." Will you uphold our second amendment rights as our Attorney General and have your views changed since that hearing?

RESPONSE: I will uphold Second Amendment rights, as I will uphold all rights established by the Constitution. When I was the Assistant Attorney General of the Office of Legal Counsel, I concluded that the Second Amendment creates a personal right under the Constitution. My analysis drew in part on the right of self-preservation set forth in John Locke's Second Treatise of Government. I was pleased to see that *Heller* vindicated my view, and there is no question following *Heller* that the right to keep and bear firearms is protected under the Second Amendment and that this is a personal right. As I stated during my hearing, what I would look for in assessing a gun-control measure is what burden it would impose on the constitutional rights of law-abiding citizens and whether that burden has a sufficiently meaningful impact on crime to justify burdening a fundamental right. I would not favor pursuing gun-control measures that burden the Second Amendment rights of law-abiding citizens without having any meaningful impact on crime or public safety.

4. In 2010, Live Nation and Ticketmaster completed a merger of the world's largest concert promoter and with the world's leading ticket provider. The consent decree--set to expire in 2020--was designed to increase competition and prohibit Live Nation from leveraging its market power in live entertainment to obtain primary ticketing contracts. There is little dispute that the consent decree has been unsuccessful meeting that goal. Since the merger, Live Nation Entertainment has solidified its dominant position in ticketing; some estimates suggest Ticketmaster controls 80% of primary ticketing. Today, it's footprint extends beyond concert promotion and primary ticketing services to artist management, venue ownership, and secondary ticketing services. As the consent decree comes close to expiration, how will the Department of Justice be reviewing this matter? Do you think that the consent decree should be extended? In what ways could the consent decree be modified to account for TM/Live Nation's increased anti-competitive behavior?

   RESPONSE: I have not studied the Ticketmaster/LiveNation consent decree and therefore do not have an opinion on the matter. If confirmed, I look forward to discussing this issue with the Antitrust Division and working with the Division to protect competition and prevent any continued anticompetitive behavior.

5. Last year the US Attorney for the Western District of Louisiana announced that three different illegal aliens were deported for the third time to Mexico and Honduras in November alone. How can we stop illegal aliens from reentering the country repeatedly, especially in cases where they are violent criminals? These deportations are costly and use our already limited resources. Would you support deported individuals' country of origin to pay for these efforts?

   RESPONSE: As you note, repeated illegal reentry is a serious problem that unnecessarily burdens our system. If confirmed, I can commit to working with this Committee regarding legislation that supports the Department's mission and priorities.

6. I arranged for several meetings with local officials and the Attorney General regarding New Orleans' sanctuary city status. The city of New Orleans and the Department of Justice entered into a consent decree to get the city into compliance. The decree stated that the city must notify ICE within 48 hours of releasing an undocumented immigrant from jail and it must allow ICE to interview an undocumented immigrant while in custody. It is my understanding that the city has made progress on the decree but is still not fully compliant. Would you be willing to take away grant funding to sanctuary cities that refuse to enforce federal law?

   RESPONSE: I am not familiar with the particular situation in New Orleans. But, I am generally aware that the Department has sought to require law enforcement grant recipients to provide this cooperation, and as a general matter, I believe that, where authority exists to do so, this is a common sense requirement that should be continued. If confirmed, I would expect to use lawful tools available to the Department to ensure that all jurisdictions provide the level of cooperation required by law.

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

QUESTIONS FROM SENATOR FEINSTEIN

1. In your written testimony, you said that your "goal will be to provide as much transparency as I can consistent with the law" with respect to any report produced by Special Counsel Mueller. You also said that "where judgments are to be made by me," you would make those judgments based solely on the law. As you may be aware, recent reports suggested that President Trump's legal team is "gearing up" to "strongly assert the president's executive privilege" in an effort to prevent information in the report from becoming public. (Carol D. Leonnig, *A beefed-up White House legal team prepares aggressive defense of Trump's executive privilege as investigations loom large*, WASH. POST (Jan. 9, 2019))

   a. Have you discussed with anyone the use of executive privilege in connection with Special Counsel Mueller's report? If so, with whom, when, and what was discussed?

   b. If confirmed, what standards would you apply and what process would you follow in evaluating any claims of executive privilege asserted by the President?

   c. How will you ensure your desire to grant the public and Congress "as much transparency" as possible is not impeded by the White House's interest in preventing full disclosure of the report?

   RESPONSE: I do not know what will be included in any report prepared by the Special Counsel, what form such a report will take, or whether it will contain confidential or privileged material. In the course of preparing for my hearing before the Committee, I recall having general discussions about the possibility that any Special Counsel report may include categories of information that could be subject to certain privileges or confidentiality interests, including classified information, grand jury information, and information subject to executive privilege. I do not recall any discussions regarding the use of executive privilege to prevent the public release of any such report. If confirmed, I will follow the law, Department policy, and established practices, to the extent applicable, in determining whether any confidentiality interests or privileges may apply and how they should be evaluated and asserted. If it turns out that any report contains material information that is privileged or confidential, I would not tolerate an effort to withhold such information for any improper purpose, such as to cover up wrongdoing.

2. Despite your pledge at your hearing "to provide as much transparency as [you] can," you

also indicated that you might not provide the report that Special Counsel Mueller will prepare at the conclusion of his investigation pursuant to the Justice Department's Special Counsel regulations. Rather, you committed only to providing your own "report based on that report." Will you commit, if confirmed, to provide to Congress the full report that Special Counsel Mueller prepares at the end of his investigation?

RESPONSE: The applicable regulations provide that the Special Counsel will make a "confidential report" to the Attorney General "explaining the prosecution or declination decisions reached by the Special Counsel." *See* 28 C.F.R. § 600.8. The commentary to these regulations, which were issued by the Clinton Administration Department of Justice, explains that the Special Counsel's report is to be "handled as a confidential document, as are internal documents relating to any federal criminal investigation. The interests of the public in being informed of and understanding the reasons for the actions of the Special Counsel will be addressed" through the Attorney General's reporting requirements. *See* 64 Fed. Reg. 37038, 37040-41. Under the regulations, the Attorney General must "notify the Chairman and Ranking member of the Judiciary Committees of each House of Congress . . . Upon conclusion of the Special Counsel's investigation." 28 C.F.R. § 600.9(a)(3). The regulations further provide that the Attorney General may publicly release the Attorney General's notification if he or she concludes that doing so "would be in the public interest, to the extent that release would comply with applicable legal restrictions." *Id*. § 600.9(c).

I believe it is very important that the public and Congress be informed of the results of the Special Counsel's work. For that reason, my goal will be to provide as much transparency as I can consistent with the law, including the regulations discussed above, and the Department's longstanding practices and policies. Where judgments are to be made by me, I will make those judgments based solely on the law and Department policy and will let no personal, political, or other improper interests influence my decision. As I stated during the hearing, if confirmed, I intend to consult with Special Counsel Mueller and Deputy Attorney General Rosenstein regarding any report that is being prepared and any disclosures or notifications that I make under applicable regulations as Attorney General.

3. In June 2018, you sent a memorandum to Deputy Attorney General Rod Rosenstein and Steve Engel, the head of the Department of Justice Office of Legal Counsel, and to President Trump's personal attorneys criticizing Special Counsel Robert Mueller's investigation. (Memo from Bill Barr to Deputy Attorney General Rod Rosenstein and Assistant Attorney General Steve Engel re: Mueller's "Obstruction" Theory (June 8, 2018)) Please provide a complete list of everyone to whom you gave the memo, when it was provided, whether there was any communication about the memo before or after it was delivered, and why you provided it.

RESPONSE: Please find attached my January 14, 2019 letter to Senate Committee on the Judiciary Chairman Lindsey Graham, which answers this question.

4. You testified that "It is very common for me and for other former senior officials to weigh in on matters that they think may be ill advised and may have ramifications down the road." Please provide a list of all other topics under the Justice Department's jurisdiction where you submitted a legal memo to the Department or the White House, the dates the memos were provided, and whom they were submitted to.

RESPONSE: As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials in both the Executive branch and Congress. For example, following the attacks of September 11, 2001, I contacted numerous officials within the administration of President George W. Bush, including officials at the White House and the Department of Justice, to express my view that foreign terrorists were enemy combatants subject to the laws of war and should be tried before military commissions, and I directed the administration to supporting legal materials I previously had prepared during my time at the Department. As a more recent example, I expressed concerns to Attorney General Sessions and Deputy Attorney General Rosenstein regarding the prosecution of Senator Bob Menendez. Apart from the memorandum that I drafted in June 2018, I do not recall any other instance in which I conveyed my thoughts to the Department of Justice in my capacity as a former Attorney General in a legal memorandum.

5. I wrote to you about the June 2018 Mueller memo in December, but I'd like you to clarify your answers for the record.

   a. You testified no one asked you to write the memo. Why did you decide to do so?

   b. At the time you submitted this memo to officials at the Justice Department and President Trump's attorneys, had you talked to anyone about a possible Attorney General nomination? If so, with whom, when, and what was discussed?

   c. Did you consult anyone during the process of drafting this memo? If so, whom?

   d. Did you discuss this memorandum or its contents with Mr. Rosenstein, Mr. Engel, or anyone at the Department of Justice before or after you submitted it? If so, with whom, when, and what was discussed? Was there any follow- up communication about the memo, its contents, or the subject matter?

   e. Did you discuss this memorandum or its contents with anyone else? If so, with whom and what was discussed? Was there any follow-up communication about the memo, its contents, or the subject matter?

RESPONSE: As I explained in my January 10, 2019 letter to you and my January 14, 2019 letter to Chairman Graham, as a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day – sometimes in discussions directly with public

officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under 18 U.S.C. § 1512(c). I decided to weigh in because I was worried that, if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority, not just by future Presidents, but by all public officials involved in administering the law, especially those in the Department of Justice. I started drafting an op-ed. But as I wrote, I quickly realized that the subject matter was too dry and would require too much space. Further, my purpose was not to influence public opinion on the issue, but rather to make sure that all of the lawyers involved carefully considered the potential implications of the theory. I discussed my views broadly with many lawyer friends; wrote the memo to senior Department officials; shared it with other interested parties; and later provided copies to friends.

To the best of my recollection, the first time anyone in the Trump administration contacted me about a potential nomination to be Attorney General was in fall 2018, months after I completed my memorandum.

To the best of my recollection, before I began writing the memorandum, I provided my views on the issue to Deputy Attorney General Rod Rosenstein at lunch in early 2018. Later, on a separate occasion, I also briefly provided my views to Assistant Attorney General Steven Engel. After drafting the memorandum, I provided copies to both of them. I also sent it to Solicitor General Noel Francisco after I saw him at a social gathering. There was no follow up from any of these Department officials, except that Solicitor General Francisco called me to say that he was not involved in the Special Counsel's investigation and would not be reading my memorandum. In addition to sharing my views with the Department, I thought they also might be of interest to other lawyers working on the matter. I thus sent a copy of the memorandum and discussed those views with White House Special Counsel Emmet Flood. I also sent a copy to Pat Cipollone, who had worked for me at the Department of Justice, and discussed the issues raised in the memo with him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow. The purpose of those discussions was to explain my views.

For further information on these issues, please see my letters of January 10 and January 14, 2019, attached and referenced above.

6. During your hearing, you reserved the right not to follow advice from career Department ethics officials.

    a. If you are confirmed, will you commit to providing to the Committee any advice career Department ethics officials give you about recusal related to this memo or

any other matter related to the Special Counsel's investigation?

b. If you disregard or disagree with advice from career ethics officials, will you also commit to providing an explanation of the basis for your disagreement and how you plan to address any concerns raised?

RESPONSE: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my intent will be to be as transparent as possible while following the Department's established policies and practices.

7. What steps will you take if you are confronted with a legal question or matter where the outcome might implicate the President's business or other financial interests?

RESPONSE: The Attorney General's job is to fairly enforce the laws of the United States. On any matter I consider, I will thoroughly review the applicable law and facts and will, as appropriate, consult with relevant officials at the Department before making a good-faith decision based on the law and the facts.

8. Longstanding Justice Department policies limit communications between the Justice Department and the White House about pending or contemplated investigations to a select few officials. (Memorandum from the Attorney General for Heads of Department Components, All United States Attorneys re: Communications with the White House and Congress (May 11, 2009)) This policy helps insulate Justice Department decisionmaking from political influence and protects potentially sensitive law enforcement information. At his nomination hearing, Deputy Attorney General Rosenstein confirmed that this policy was still in place and committed to enforcing it. (S. Hrg. *Confirmation Hearing on the Nomination of Rod Rosenstein to be Deputy Attorney General* (Mar. 7, 2017))

When you were asked at your hearing what the current Justice Department communications policy is, you said, "Well, it depends -- it depends what it is, but on criminal matters I would just have the AG and the deputy."

a. Are you familiar with the longstanding Justice Department policy memorialized in a May 2009 letter from Attorney General Holder? If you are confirmed, do you commit to enforcing this policy and ensuring that both the Justice Department and the White House know the rules?

b. You also stated in the hearing, you thought you would strengthen the policy. What did you mean by that?

RESPONSE: The Department has policies in place that govern communications between the White House and the Department. If I am confirmed, I would act in accordance with Department of Justice protocols, including the 2009 Memo on

communications with the White House issued by former Attorney General Holder. 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. If I am confirmed, I will be reviewing many of the policies and practices of the Department and making adjustments as appropriate.

9. The Justice Department and FBI consistently decline to comment publicly or to Congress about open investigations. The Inspector General calls this the "stay silent" rule and says that rule, among other things, protects "the integrity of an ongoing investigation" and "the Department's ability to effectively administer justice without political or other undue outside influences." (Department of Justice, Office of the Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018) at p. 371) For similar reasons, nearly two decades ago, the Justice Department informed Congress in a letter to Rep. John Linder that "[t]he Department's longstanding policy is to decline to provide Congressional committees with access to open law enforcement files." (Linder Letter, 1/27/00)

    a. Are you familiar with this longstanding Justice Department policy against public disclosure of information about open investigations?

    b. If you are confirmed, do you commit to enforcing this policy against public disclosure of information about open investigations?

    c. Is the disclosure of information about a confidential source consistent with this policy?

    d. Is providing FISA applications relevant to an ongoing investigation consistent with this policy?

    RESPONSE: I am generally familiar with the Department's policy with regard to open investigations and, if confirmed, look forward to more closely reviewing this and other Department policies. As a general matter, I believe the Department should refrain from commenting on ongoing investigations and cases. However, there are exceptional circumstances where it may be appropriate, consistent with Department policy, and in the public's interest, to provide information in a public setting regarding ongoing matters before indictment or formal charge. Whether particular information related to an open investigation should be publicly disclosed would depend on the facts and circumstances of the individual case.

10. You have repeatedly endorsed an expansive view of presidential power, referred to as the "unitary executive theory." (William P. Barr, Assistant Attorney General, Office of Legal Counsel, *Common Legislative Encroachments On Executive Branch Authority*, (July 27, 1989)) Under this theory, the President would have virtually limitless control over the Executive Branch, and very few, if any, checks on his constitutional authorities.

At your hearing, you promised to allow Special Counsel Mueller's investigation to continue unimpeded if you are confirmed as Attorney General and committed to complying with the Justice Department's Special Counsel regulations. Under the unitary executive theory, would the President have the power to direct the Attorney General's to rewrite the regulations?

RESPONSE: The unitary executive theory simply recognizes, as the Supreme Court has repeatedly held, that Article II of the Constitution "'makes a single President responsible for the actions of the Executive Branch.'" *Free Ent. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 496-97 (2010) (quoting *Clinton v. Jones*, 520 U.S. 681, 712-13 (1997) (Breyer, J., concurring in judgment)). To that end, the President must have plenary control over the Executive Branch to implement his constitutional obligations, and he may remove the Attorney General, if he disagrees with the Attorney General's decisions. If confirmed, I intend to scrupulously follow Department regulations and to allow the Special Counsel to complete his investigation.

As I made clear at the hearing, I would not countenance changing the existing regulations for the purpose of removing Special Counsel Mueller without good cause.

11. The Supreme Court rejected the unitary executive theory in *Morrison v. Olson*, 487 U.S. 654 (1988).

    a. Do you believe *Morrison v. Olson* was correctly decided?

    RESPONSE: *Morrison* held that the good-cause removal restrictions on the independent counsel were constitutionally permissible because she was an inferior officer with limited jurisdiction. As the Supreme Court reiterated in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 495 (2010), *Morrison* concerned the "status of inferior officers" and the specific "circumstances" of the independent counsel statute. While, as an original matter, I thought *Morrison* was not correct, it is my understanding that the Supreme Court has not overruled that decision. If confirmed, and if the issue arose, I would need to consult with the Office of Legal Counsel and review subsequent decisions by the Supreme Court to determine whether they have any bearing on the decision.

    b. In your view, are laws requiring the President to have "good cause" before removing heads of independent agencies constitutional?

    RESPONSE: Under the Supreme Court's precedents, including *Morrison v. Olson*, the constitutionality of such restrictions would depend on facts such as the precise nature of the for-cause removal provision and the structure of the agency in question.

c. During your hearing you said, "the President can fire a U.S. Attorney. They are a presidential appointment." Was it acceptable for the President to dismiss seven U.S. Attorneys for prosecuting Republican elected officials or not prosecuting Democratic elected officials in 2006?

RESPONSE: I am not aware of the reasons why the George W. Bush Administration requested the resignations of the U.S. Attorneys in question, but I believe it is uncontroversial that U.S. Attorneys are political appointees freely removable by the President. *See* 28 U.S.C. § 541(c) ("Each United States attorney is subject to removal by the President.").

12. You have said that, as Attorney General, you advised President George H.W. Bush that you "favored the broadest" pardon for Caspar Weinberger and several other individuals implicated in the Iran-Contra Affair. (Miller Center Interview, 4/5/01) Then- Independent Counsel Lawrence Walsh said the decision to issue these pardons "undermines the principle that no man is above the law. It demonstrates that powerful people with powerful allies can commit serious crimes in high office—deliberately abusing the public trust without consequence." (David Johnston,*Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-Up'*, N.Y. TIMES (Dec. 25, 1992))

    a. Do you believe the President's pardon authority is subject to any limits? What would constitute an abuse of presidential pardon authority?

    b. Could a President under criminal investigation pardon his co-conspirators?

    c. Could a President offer a pardon in exchange for a witness's agreement not to cooperate with investigators?

    d. Could the President grant pardons in exchange for bribes?

    RESPONSE: The decision to issue a pardon is a highly individualized determination that takes into account myriad factors. Depending on the facts and circumstances, the decision can take into account the seriousness of the crime, remorse expressed by the individual, any mitigating factors involved in the crime, harm to victims, evidence of rehabilitation, the nature and severity of the sentence imposed, and countless other factors. Under the Constitution, the President's power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. A president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate. And as I explained in my testimony, under applicable Department of Justice policy, if a President's actions constitute a crime, he or she may be subject to prosecution after leaving office. If confirmed, I will consult with the Office of Legal Counsel and other relevant Department personnel regarding any legal questions relating to the President's pardon authority.

13. In your view, what are the options for holding a president accountable for abuse of the

pardon authority? During your hearing, you were asked if the President has authority to use money appropriated to the Defense Department to build a wall on the border. You responded, "without looking at the statute, I really could not answer that."

a. Now that you have had the opportunity to review any relevant statutes, please state whether you believe the President can use money currently appropriated to the Defense Department to build a border wall.

b. Putting aside the statute, do you believe the President has inherent authority under the Constitution to use appropriated funds regardless of what Congress dedicated the funds for?

RESPONSE: While news media reports have identified certain statutory provisions that the Administration may be considering, I have not studied this issue sufficiently to form an opinion about their availability, which would depend in part on determinations made by various decision makers. If I were Attorney General, this is the kind of question on which I would expect to be able to rely on advice from the Office of Legal Counsel and from attorneys working at the various agencies whose programs were implicated by the statutes.

As I stated at the hearing, I do not believe that the President, as a general proposition, can ignore congressional limits on appropriations. The interplay between Congress's spending powers and the President's own constitutional duties is a complex issue that would have to be resolved within the bounds of the specific facts and circumstances raised by a particular question.

14. In 2005, the George W. Bush Administration issued a signing statement reserving the President's right to decline to enforce the Detainee Treatment Act's ban on torture. The statement argued the ban could infringe on the President's Commander in Chief authority. (Bush Signing Statement (Dec. 30, 2005))

a. Do you agree with this signing statement?

b. Do you believe it was lawful?

RESPONSE: I have not studied this signing statement and therefore do not have an opinion on it. As I said at the hearing, I do not believe that torture is ever lawful.

15. Have you reviewed the Executive Summary of the Senate Select Committee on Intelligence's Study into the CIA's Detention and Interrogation Program? If confirmed, will you commit to reviewing the full, classified study before you work on any matter regarding detainee treatment or interpretation of the Convention Against Torture or Geneva Conventions?

RESPONSE: I have not reviewed the Executive Summary of the Senate Select

Committee on Intelligence's Study into the CIA's Detention and Interrogation Program. If confirmed, I will review the study.

16. During your hearing, you told Senator Grassley that, if confirmed, you will ensure that the Justice Department will respond in a timely manner to requests from both Committee Chairs and Members of Congress.

    a. Will you specifically commit to timely responding to minority requests—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 will continue this practice and will be pleased to work with Congress through the Department's Office of Legislative Affairs.

    b. 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 an assertion of executive privilege is being considered, I will follow the established process of ensuring that the Department thoroughly reviews the legal basis for the privilege claim, and if I am satisfied that that assertion of the privilege would be legally permissible, I would so advise the President in a letter that would be provided to the requesting committee at the time it is informed of the privilege assertion.

17. On January 16, 2019, the U.S. General Services Administration (GSA) Office of Inspector General released a report regarding the Old Post Office Building that GSA leases to President Trump and a corporation he wholly owns. The report concluded that GSA attorneys acted improperly when they "agreed [that the lease presented] a possible violation of the Foreign Emoluments Clause but decided not to address the issue." This conclusion was based, in part, on the GSA attorneys' "fail[ure] to seek OLC's guidance, even though [they] knew that OLC issued opinions on the Foreign and Presidential Emoluments Clauses." (GSA OIG Report at p. 16) During your hearing, you repeatedly discussed the importance of seeking the Office of Legal Counsel's guidance when faced with complex constitutional questions.

a. The Justice Department has also been confronted with issues related to President Trump's financial holdings and the Emoluments Clauses. If confirmed, do you commit to seeking guidance from OLC on the applicability of the Emoluments Clauses to President Trump's personal financial interests?

RESPONSE: I know that the Department of Justice is defending certain lawsuits in which the President has been sued for alleged violations of the Emoluments Clause, but I am not aware of other issues relating to the Emoluments Clause that may be before the Department. If confirmed, I will consult with the Office of Legal Counsel and all appropriate offices within the Department, to the extent questions may arise.

b. Do you commit to make public any OLC opinion on the applicability of the Emoluments Clauses to President Trump's personal financial interests to enable the public to understand OLC's reasoning and conclusions about the issue?

RESPONSE: I cannot make any commitments about disclosure of any existing opinions or hypothetical future opinions until I have had the opportunity to review such opinions. As a general matter, I would expect OLC to make public its opinions, on any subject, in accordance with the general practices of the Office.

18. Please describe the selection process that led to your nomination to be Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: To the best of my recollection, on or about November 6, 2018, I was contacted by the White House Counsel regarding whether I would be willing to serve as Attorney General. I indicated during that discussion that I was not then in a position to serve and instead recommended several other potential candidates. I believe I may have had follow up conversations in November with the White House Counsel about other possible candidates. At some point prior to Thanksgiving 2018, I communicated to the White House Counsel that I had reconsidered and would be willing to be considered for the position. On November 27, 2018, I participated in an interview at the White House with the White House Counsel and the President. During that interview, the President offered me the position, and I accepted. The President publicly announced his intent to nominate me on December 7, 2018 and formally nominated me on January 3, 2019.

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

RESPONSE: To the best of my recollection, my response to Question 18 above includes all interviews and related communications about my potential nomination to be Attorney General prior to my selection by the President. In addition to those

communications, I have spoken with individuals at the White House and Department of Justice about numerous issues, including paperwork and logistics, throughout the selection and nomination process for this position. Finally, I have periodically received words of support, encouragement, or congratulations from individuals I know who work at the Department of Justice.

20. Have you spoken with anyone about possible recusal from the Special Counsel's investigation? If so, with whom, when, and what was discussed?

RESPONSE: To the best of my recollection, I have not discussed the possibility of recusal from the Special Counsel's investigation with anyone at the White House. After the President announced that he intended to nominate me to serve as Attorney General, I discussed with officials in the Department of Justice whether the memorandum that I drafted in June 2018 would require recusal or present a conflict of interest.

21. Did President Trump or anyone else ever ask you to promise not to recuse from the Special Counsel's investigation?

RESPONSE: No.

22. You previously wrote: "The fact that terrorists' actions have been made criminal does not preclude the government from treating them as enemy combatants without any rights under our criminal justice system." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Do you still hold that view?

RESPONSE: Congress and the courts have endorsed the view, held by multiple Administrations, that terrorists who are engaged in an armed conflict with the United States can be detained by the military as enemy combatants. While such individuals may be entitled in some contexts to challenge their detention by writ of habeas corpus, they need not be criminally prosecuted. Terrorists who have committed crimes under U.S. law can also be prosecuted in our criminal justice system, and if so, they are afforded the constitutional and statutory rights that apply in criminal proceedings. Those same rights do not apply when terrorists are held as enemy combatants.

23. You previously wrote: "Thus, where the government sees an *individual* foreign person apparently acting as a terrorist, that should be a sufficient basis to conclude that the individual is not part of 'the people' and thus not protected by the Fourth Amendment." (*Securing Freedom and the Nation: Collecting Intelligence Under the Law, Constitutional and Public Policy Consideration*, 108th Cong. (Oct. 30, 2003)) Is it your position that non-citizens, even those located in the United States, are not protected by the Fourth Amendment of the Constitution? If so, what is the basis for that view?

RESPONSE: The cited portion of my 2003 testimony concerned the requirement in

the Foreign Intelligence Surveillance Act (FISA) to establish probable cause that an individual is an agent of a foreign power. In 2004, Congress expanded FISA to reach foreign individuals who are engaged in international terrorism, consistent with my recommendation. I believe that provision is consistent with the Fourth Amendment.

In terms of the application of the Fourth Amendment more generally to foreign persons, my understanding is that the answer might depend on a number of factors, including the lawfulness of the non-citizen's presence in the country and the non-citizen's connections to the country. *See generally United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990). The position of the Department in a particular case will be based on an assessment of the specific facts and the law.

24. Is the President authorized under Article II of the Constitution to conduct warrantless domestic security surveillance? Please explain your answer.

RESPONSE: The President has authority to conduct "domestic security surveillances" consistent with the requirements of the Fourth Amendment. *United States v. U.S. District Court*, 407 U.S. 297 (1972) (*Keith*). In that case, the Court held that there is no general exception to the Warrant Clause of the Fourth Amendment for domestic security surveillance, while expressing no opinion as to the issues that would be presented with respect to surveillance of the activities of foreign powers or their agents. After *Keith* was decided, a number of courts of appeal determined that a foreign intelligence exception exists to the Fourth Amendment's Warrant Clause. *See, e.g.*, *United States v. Truong Dinh Hung,* 629 F.2d 908 (4th Cir. 1980); *United States v. Buck,* 548 F.3d 871 (9th Cir. 1977). In 1978, Congress enacted the Foreign Intelligence Surveillance Act, in addition to the previously enacted Wiretap Act and other provisions of Title 18 of the U.S. Code, to address domestic collection for foreign intelligence purposes and for criminal investigations.

25. Does the President have authority under Article II of the Constitution to conduct bulk collection of Americans' telephone metadata? Please explain your answer.

RESPONSE: Collection of telephone metadata is regulated by provisions of the USA Freedom Act and other statutes, which address the circumstances under which the government can compel the collection of telephone metadata within the United States and the means by which the government can collect such records from telecommunications providers.

26. You previously wrote: "Numerous statutes were passed, such as FISA, that purported to supplant Presidential discretion with Congressionally crafted schemes whereby judges become the arbiter of national security decisions." (*Testimony of William P. Barr before the House Select Committee on Intelligence* (Oct. 30, 2003))

    a. In your view, is the President required to follow laws enacted by Congress governing surveillance? If not, please explain the basis for this conclusion.

RESPONSE: The President must follow the surveillance laws consistent with his constitutional responsibilities. I am not aware of any aspect of current law that is inconsistent with those responsibilities.

b. Are there any aspects of existing surveillance law, including the Foreign Intelligence Surveillance Act (FISA), that you believe the President can disregard? Please identify specific legal provisions and the basis for your conclusion that these provisions do not apply to the President.

RESPONSE: The President must follow the surveillance laws consistent with his constitutional responsibilities. I am not aware of any aspect of current law that is inconsistent with those responsibilities.

c. Is the Foreign Intelligence Surveillance Act (FISA) the exclusive means for the President to conduct foreign intelligence electronic surveillance in the United States? Please explain your answer.

RESPONSE: FISA provides that it and the authorities of Title 18, or any other express authorization by statute, are the exclusive means for domestic electronic surveillance, as that term is defined in FISA. *See* 50 U.S.C. § 1812 ("Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.").

27. Previous Attorney General nominees, including your predecessor, agreed to seek and follow the advice of career ethics officials about questions of recusal that may arise during service in the Justice Department.

a. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of the companies — private and public, including parent companies, subsidiaries, and related entities — for which you have served on the board of directors or advisors? These companies include Och-Ziff Capital Management Group, LLC; Dominion Energy, Inc.; Time Warner, Inc.; Holcim (US) Inc. and Aggregate Industries Management, Inc.; Selected Funds; and Dalkeith Corporation.

b. If confirmed, will you commit to seeking and following the advice of career ethics officials with respect to recusal from matters relating to all of your legal and consulting clients, including but not limited to Caterpillar and Credit Agricole?

c. If you will not commit to following the advice of career ethics officials, will you commit to providing to Congress the advice that they provided to you along with an explanation of why you are not following their advice?

RESPONSE: If confirmed, I will consult with the Department's career ethics officials, review the facts, and make a decision regarding my recusal from any matter in good faith based on the facts and applicable law and rules. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my intent will be to be as transparent as possible while following the Department's established policies and practices.

28. According to the ethics agreement prepared by the Justice Department's Justice Management Division on January 11, 2019, you agree if confirmed to "not participate personally and substantially in any particular matter involving specific parties in which" the law firm Kirkland & Ellis "is a party or represents a party," unless you first receive authorization to participate. That prohibition applies for a period of one year after your resignation from Kirkland.

    a. If confirmed, will you commit to following this agreement even if it applies to investigations conducted by Special Counsel Mueller?

    b. If confirmed, will you commit to following this agreement even if it applies more broadly to investigations into potential interference in the 2016 Presidential election, including but not limited to investigations into collusion and/or obstruction of justice?

RESPONSE: If confirmed, I commit to abide by the terms of my ethics agreement with the Department of Justice.

29. During your confirmation hearing to be Attorney General in 1991, you said that the right to privacy in the Constitution does not "extend[] to abortion" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-505, Pt. 2, *Confirmation Hearing on the Nomination of William P. Barr to be Attorney General* (Nov. 12, 1991) at p. 63) In a June 1992 hearing before the Senate Judiciary Committee, you echoed these comments and said the Supreme Court's 1992 decision in *Planned Parenthood v. Casey* "didn't go far enough" and that "*Roe v. Wade* should be overruled." (S. Hrg. 102-1121, *Proposed Authorizations for Fiscal Year 1993 for the Department of Justice* (June 30, 1992) at p. 47) At the time you made these remarks *Roe v. Wade* had been established precedent for 18 years. *Roe v. Wade* is now more than 40 years old and has survived more than three dozen attempts to overturn it.

    a. Is *Roe v. Wade* settled law? Do you still believe that *Roe v. Wade* should be overruled?

    RESPONSE: *Roe v. Wade* is precedent of the Supreme Court and has been reaffirmed many times. I understand that the Department has stopped, as a routine matter, asking that *Roe* be overruled.

    b. Do you believe that the Due Process Clause of the Fourteenth Amendment

includes a right to privacy?

RESPONSE: The Supreme Court has repeatedly held that the Due Process Clause of the Fourteenth Amendment contains a right to privacy.

30. As Attorney General, you argued that it was proper for the Justice Department to urge the Supreme Court to overturn established precedent. You said that "urging the Court to reconsider a prior decision serves the executive branch's obligation to the Constitution, without diminishing the Court's constitutional role." (15 CARDOZO L. REV. 31 (1993)).

When is it proper for the Justice Department to urge the Court to overturn precedent? What factors should the Department take into account before urging the Court to overturn precedent?

RESPONSE: Respect for precedent is critical to the rule of law. At the same time, the Supreme Court has made clear that *stare decisis* is not an inexorable command. The Court has explained that deciding whether to overrule precedent requires weighing (among other factors) whether a prior decision is correctly decided, well-reasoned, practically workable, consistent with subsequent legal developments, and subject to legitimate reliance interests. The Justice Department should take all of those factors into account when deciding whether to argue that the Court should overrule precedent.

31. During an appearance on CNN in July 1992, while you were Attorney General, you said "I think this [Justice] Department will continue to do what it's done for the past 10 years and call for the overturning of *Roe v. Wade* in future litigation." (Evans and Novak, CNN Television Broadcast (July 4, 1992))

a. Will you commit to ensuring that the Department of Justice does not call for reconsideration and overturning of *Roe v. Wade*, if you are confirmed as Attorney General?

RESPONSE: In the Reagan and Bush Administrations, the Solicitor General routinely asked the Supreme Court to overrule *Roe v. Wade*. But at that time, *Roe v. Wade* was less than 20 years old.

Since then, the Supreme Court has reaffirmed *Roe* in a number of cases, and *Roe* is now 46 years old. Moreover, a number of Justices have made clear they believe that *Roe* is settled precedent of the Supreme Court under *stare decisis*.

In addition, the Department has stopped routinely asking the Court to overrule *Roe*. I think the issues in abortion cases today are likely to relate to the reasonableness of particular state regulations, and I would expect the Solicitor General will craft his positions to address those issues. At the end of the day, I will be guided by what the Solicitor General determines is appropriate in a

particular case.

b. Will you commit to ensuring that the Department does not seek ways, short of overturning *Roe*, to limit reproductive rights?

RESPONSE: The Department of Justice will enforce existing law.

32. At your confirmation hearing, Senator Blumenthal asked whether you would defend *Roe v. Wade* if it were challenged. You responded that "usually the way this would come up would be a State regulation of some sort and whether it is permissible under *Roe v. Wade*. And I would hope that the SG would make whatever arguments are necessary to address that." (S. Hrg, *Confirmation Hearing on the Nomination of William Barr to Be Attorney General* (Jan. 15, 2019) Tr. at 145)

a. If confirmed, will you ensure that the Justice Department defends *Roe v. Wade* in court?

b. Will you ensure that the Department does not argue that state restrictions do not constitute a "substantial burden" on a woman's right to abortion?

RESPONSE: Please see my responses to Question 31 above.

33. At any point before or after your nomination to be Attorney General, has anyone from the Trump Administration discussed with you your views on *Roe v. Wade*? If so, please describe these discussions, including when they took place, who was involved, and what was discussed.

RESPONSE: To the best of my recollection, I have not discussed my views on *Roe v. Wade* with anyone in the Trump Administration apart from general discussions with Department personnel assisting me in preparing for my hearing and drafting these answers.

34. In the summer of 1991, while you were Deputy Attorney General, the anti-choice group Operation Rescue organized a six-week long protest of three abortion clinics in Wichita, Kansas. The protests resulted in 2,600 arrests. Judge Patrick Kelly, a federal district court judge in Kansas, entered a preliminary injunction barring Operation Rescue and its protestors from blocking access to abortion clinics and physically harassing staff and patients. The Justice Department intervened in the litigation on behalf of Operation Rescue and sought to stay Judge Kelly's preliminary injunction order.

According to news reports, the Justice Department argued that the abortion clinics had not demonstrated that they would prevail in their lawsuit and that the specific requirements of the order intruded on the Marshals Service's discretion to enforce court orders. Although Judge Kelly granted the Justice Department's request to intervene in the lawsuit, he reportedly said he was "disgusted by this move" and he characterized the Justice Department's involvement as political. (*U.S. Backs Wichita Abortion Protestors*,

ASSOCIATED PRESS (Aug. 7, 1991)).

During this time, the Justice Department was involved in a similar case in Virginia – *Bray v. Alexandria Women's Health*. This case concerned a lawsuit by several abortion clinics to prevent protesters from conducting demonstrations at clinics. The Justice Department again intervened on behalf of the protesters.

Please describe the nature and extent of your involvement in cases involving abortion clinic protests – including the Kansas and Virginia cases mentioned above – during your tenure as Deputy Attorney General and Attorney General under President George H.W. Bush.

RESPONSE: As Deputy Attorney General and, later, as Attorney General in the administration of President George H.W. Bush, I had broad supervisory responsibilities over the Department of Justice. My involvement in *Women's Health Care Services v. Operation Rescue* was discussed in detail during my 1991 confirmation hearing to be Attorney General. My colloquy with Senator Edward Kennedy on this issue can be found at pages 29-34 of the November 12, 1991 transcript, which I have attached for your reference. To the best of my recollection, I did not play a role in formulating the Department of Justice's position in *Bray v. Alexandria Women's Health*.

35. There has been significant reporting about young migrants being forced to appear in immigration court hearings without adequate representation. For example, there have been reports of toddlers sipping milk bottles as they defend themselves in immigration court without their parents or guardians. (Sasha Ingber, *1-Year-Old Shows Up in Immigration Court*, NPR (July 8, 2018)) Courts have consistently held that anyone on United States soil is protected by the Constitution's right to due process. (*See, e.g.*, *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to [the] constitutional protection" in the Fifth and Fourteenth Amendments)

    a. Are toddlers receiving due process when they appear alone in immigration court?

    b. If confirmed, what specific steps will you take to ensure that minors are adequately represented in immigration court proceedings?

RESPONSE: I am not yet familiar with the current specific operations of immigration courts in cases involving minors, but it is my general understanding that all respondents in immigration proceedings, including minors, are afforded protections established by the Immigration and Nationality Act and applicable regulations. My understanding is that, under federal law, 8 U.S.C. § 1362, all respondents have a right to counsel in immigration proceedings at no expense to the government. I also understand that the issue of counsel for minors at government expense, including for both accompanied and unaccompanied alien children, remains in litigation. It is the longstanding policy of the Department of Justice not to comment on pending matters,

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

36. At your hearing, Senator Durbin discussed the zero-tolerance policy implemented by then-Attorney General Sessions that led to the separation of over 2,000 children from their parents at the Southern border. Specifically, he asked you whether you agree with the zero-tolerance policy decision. You acknowledged that the Administration walked back its family separation policy in a June 2018 executive order, but you did not directly answer Senator Durbin's question.

    a. Do you agree with the Zero Tolerance policy?

    b. Do you agree with separating children from their parents when they arrive in the United States? If yes, why? If not, why not?

    c. If confirmed, will you commit that the Justice Department will not continue, reinstate, and/or defend policies that lead to family separations?

RESPONSE: As I stated in my testimony, I do not know all the details of the Zero Tolerance Initiative and its application to family units 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.

37. If confirmed, will you enact policies that restrict asylum law or lead to prolonged or indefinite detention of children and families? Such policies include changing the definition of "particular social group" to exclude families or forcing parents to choose between being detained with their children and being separated but allowing their children to apply for asylum.

RESPONSE: If confirmed, it will be my job as Attorney General to enforce immigration laws as they are enacted by Congress and to support policies set by the President consistent with the law. As to consideration of any hypothetical policies, I would look at the individualized facts of a situation and follow the law in determining what to do. As I stated above, 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.

38. President Trump has determined that asylum seekers who have already filed asylum claims within the United States will be forced to wait in Mexico while their claims are adjudicated. In Mexico, many of these asylum seekers, including small children, have no fixed address, but instead camp out in stadiums or on the street.

    An asylum seeker who demonstrates a credible fear of persecution must receive an opportunity to make his or her case before an immigration judge. This means the asylum

applicant will need to receive documents from the Justice Department, including hearing notices, in Mexico, where they have no fixed address and where legal requirements for service of documents differ from the requirements for service in the United States.

How will the Justice Department ensure that asylum seekers with no fixed address in Mexico receive notice of the time and place of the hearings before the immigration judge, and receive documents regarding their case, including notices of changes in the Immigration Court calendar?

RESPONSE: I have not studied the issues raised by this question in detail and therefore do not have an opinion on the matter. I expect that the Department of Homeland Security and the Department of Justice will comply with applicable legal requirements regarding notice and the service of documents in immigration proceedings.

39. At your hearing, Senator Hirono asked whether you believe the 14th Amendment to the U.S. Constitution guarantees birthright citizenship. You responded that you "have not looked at that issue." The Citizenship Clause of the 14th Amendment states that "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."

    a. Do you agree that the 14th Amendment to the U.S. Constitution guarantees birthright citizenship? If not, on what basis did you reach that conclusion?

    b. Do you agree that a child born in the United States to undocumented parents is a citizen of the United States? If not, on what basis did you reach that conclusion?

RESPONSE: As I said at the hearing, 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.

40. Last October, President Trump announced plans to prepare an executive order ending birthright citizenship. Do you believe the President has the authority to nullify birthright citizenship by executive order?

RESPONSE: As I said at the hearing, 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.

41. A longstanding principle of U.S. asylum law is that a group of family members constitutes the "'prototypical example' of a particular social group" *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985). Nonetheless, the Acting Attorney General referred an immigration case to himself and asked the parties to brief "whether, and under what

circumstances, an alien may establish persecution on account of membership in a particular social group under 8 U.S.C. 1101(a)(42)(A) based on the alien's membership in a family unit." (*Matter of L-E-A-,* 27 I&N Dec. 494 (A.G. 2018)) If confirmed, will you review the grounds for certifying this question to the Attorney General and, if you agree with the decision to do so, explain the basis for that decision to this Committee?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more about it.

42. Under federal law, fugitives cannot legally purchase or possess guns. I am deeply troubled that the Justice Department has now issued guidance that forced the FBI National Instant Criminal Background Check System database — also called NICS — to drop more than 500,000 names of fugitives with outstanding arrest warrants. I know that local law enforcement shares these concerns. Apparently, the FBI was forced to drop these names because the Justice Department has further narrowed the definition of "fugitive" to include only those who cross state lines to avoid prosecution.

    a. If confirmed, will you commit to reviewing the Justice Department's decision about who qualifies as a "fugitive"?

    b. Do you think this decision put public safety at risk? Why or why not?

RESPONSE: I am not familiar with this specific issue, but if confirmed, I will review the policies and procedures at the Department and make changes as appropriate. I am committed 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.

43. Following the murders of nine churchgoers at Emanuel AME church in South Carolina in 2015, the FBI admitted it did not properly obtain information regarding the gunman's drug arrest record, which should have prohibited him from buying a handgun. Because the FBI had not received the correct information within 3 days, the dealer was legally permitted to complete the sale to the gunman. As a result, 9 were killed.

    Would you support extending or eliminating the three-day requirement that allows a gun dealer to transfer a gun without a completed background check? If not, please explain why you would not support this change.

RESPONSE: I have no knowledge of the facts and circumstances surrounding the tragedy at the Emanuel AME church beyond what I have seen reported in the news media and the testimony given on Day 2 of my Nomination Hearing. I also have not studied whether changes to the three-day waiting period are advisable. If confirmed, I will review this issue along with other issues affecting public safety.

44. I am increasingly concerned about legislation that would imperil police officers in California and nationwide, specifically a proposal to force every state to recognize

concealed-carry permits issued by other states, even those states that have less stringent standards for issuing concealed carry permits. Major national law enforcement organizations, such as the International Association of Chiefs of Police and the Major Cities Chiefs Association, have recognized how dangerous such a proposal would be for officers nationwide.

a. Do you believe the Second Amendment requires California to recognize a concealed-carry permit from Alabama or Texas? Do you believe that this is required by any other constitutional provision? Please provide a yes or no answer and explain your reasoning.

b. What is your position on legislation that requires one state to recognize concealed-carry permits issued by other states? Please explain the basis for your views.

RESPONSE: I have not studied this specific issue and am not currently in a position to opine. As I noted in my testimony, even before the Supreme Court decided the *Heller* case, I had worked on Second Amendment issues and believed that the Second Amendment confers an individual right under the Constitution. Of course, that issue has now been settled by the Supreme Court, and applied to the states as well. The question of whether the Second Amendment, or any other provision of the Constitution, would require one state to recognize another's concealed carry permit is one I have not considered.

45. The Administration recently issued a regulation to ban bump stocks, which essentially transform semi-automatic rifles into machineguns. In 2017, bump stocks enabled the shooter in Las Vegas to carry out the most catastrophic mass shooting in American history. That regulation, however, has now been challenged in court, and it may not be upheld. A law, however, would not be vulnerable to the same sort of challenge. If confirmed, do you commit to support legislation to ban bump stocks?

RESPONSE: If confirmed, I would be pleased to review any legislation on this issue.

46. Many domestic violence abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are still able to stockpile an arsenal of firearms and ammunition. That is despite being prohibited from possessing firearms or ammunition under federal firearms law. Local domestic violence programs often attempt to help victims by seeking enforcement of federal law and removal of the firearms, but they are unable to get assistance from the Department of Justice and other federal agencies. Similarly, local law enforcement is often overwhelmed by the sheer number of firearms in the possession of domestic violence offenders.

If you are confirmed, how will the Department of Justice improve its response to cases like these, which are likely to lead to homicides, and what kind of resources will you devote to make sure that guns are not as accessible to domestic abusers?

RESPONSE: I am committed 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 am not familiar with the specific issues you raise with regard to federal assistance to local officials in these matters, but if confirmed, I look forward to working with you and the Committee on this important issue.

47. We are at an important moment in our nation with regarding to addressing sexual assault and the MeToo movement. If confirmed as Attorney General, what will the Department of Justice's role and priorities be with regards to addressing sexual assault through the Office on Violence Against Women and the Office for Victims of Crime?

RESPONSE: If I am confirmed, addressing sexual assault will continue to be a priority for the Department of Justice. It is my understanding that the Department has made combatting sexual assault a priority for grant funding, implemented statutory set-asides for projects focused on improving responses to sexual assault, and administered grant programs dedicated exclusively to providing sexual assault services. I look forward to learning more about the important work the Department is doing in the field.

48. If confirmed as Attorney General, will you commit to working with Congress to reauthorize the Violence Against Women Act, including improvements to support the national response to domestic violence, dating violence, sexual assault, and stalking?

RESPONSE: I recognize the importance of the Violence Against Women Act. If confirmed, I would be pleased to work with the Committee on reauthorization legislation that supports the Department's mission and priorities.

49. As Attorney General, you will be responsible for enforcing the landmark Voting Rights Act, which has proven instrumental to expanding the right to vote for all Americans, and minorities in particular. But with its 2013 decision in *Shelby County v. Holder*, the Supreme Court gutted the law by severely limiting the ability of the Justice Department to block discriminatory voting laws from taking effect in states with a history of limiting minority voting rights. This majority based its decision on its conclusion that "the conditions that originally justified these measures no longer characterize voting" in states with a history of discriminatory voting practices.

    a. Do you agree that "the conditions that originally justified [the application of preclearance provisions in the Voting Rights Act to certain states] no longer characterize voting" in states with a history of discriminatory voting practices?

    b. If confirmed, would you support legislation to restore the preclearance provisions struck down by the Court in Shelby County?

RESPONSE: I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans, and, as I stated in my written testimony, would make

these issues a priority for the Department if confirmed. The Department of Justice is bound to enforce the laws that Congress enacts, subject to the authoritative interpretations of the Supreme Court. If confirmed, I will be committed to working with Congress regarding legislation that supports the Department's mission and priorities in this important area.

50. On October 20, just weeks before the 2018 election, President Trump tweeted: "All levels of government and Law Enforcement are watching carefully for VOTER FRAUD,including during EARLY VOTING." (President Donald Trump, (@realDonaldTrump), Twitter (Oct. 20, 2018, 8:36 AM)) And the day before the election, President Trump said: "All you have to do is go around, take a look at what's happened over the years, and you'll see. There are a lot of people — a lot of people — my opinion, and based on proof — that try and get in illegally and actually vote illegally." (Amy Gardner, *Without evidence, Trump and Sessions warn of voter fraud in Tuesday's elections*, WASHINGTON POST, (Nov. 5, 2018))

    Are you aware of any evidence that "a lot of people" vote illegally? If not, are you concerned about statements like this undermining the public's faith in election results?

    RESPONSE: I have not studied the issues raised by this question in great detail and am not familiar with data and statistics on this matter. As I mentioned in my opening statement to the Committee, in a democracy like ours, the right to vote is paramount. Fostering confidence in the outcome of elections means ensuring that the right to vote is fully protected. If confirmed, ensuring the integrity of elections will be one of my top priorities.

51. Remarkably, in Texas, a voter can show a handgun license to vote, but not a student ID. And in Georgia, the name on a voter registration form must be identical to the applicant's name as it appears on his or her ID. Any minor discrepancy or clerical error — for example, a hyphen on the voting application that does not appear on the ID — could be grounds for blocking voters from registering or for kicking voters off of the voting rolls. (Janell Ross, *It's Time for a New Voting Rights Act*, THE NEW REPUBLIC (Nov. 13, 2018))

    a. What is the basis to allow someone to vote if they show a handgun license, but not a student ID?

    b. Is a minor discrepancy between a voter registration form and a photo ID — for instance, a hyphen in the name on a voting application that does not appear on the voter's ID — a valid reason to purge a registered voter from the voting rolls?

    RESPONSE: States have enacted various photographic voter identification laws, and those laws vary from state to state. Generally, the question of which forms of identification state and local officials may accept at the polling place is a question of state law, not federal law. Additionally, questions regarding the removal of individuals from voter registration lists based upon a discrepancy between a voter registration

form and a photographic identification are generally questions of state law, not federal law.

52. Under longstanding policy, the Justice Department will defend the constitutionality of any statute so long as a reasonable argument can be made in its defense. Attorney General Sessions concluded that no reasonable argument could be made in defense of the ACA and, specifically, the ACA's guaranteed-issue provision. During your confirmation hearing, you told Senator Harris that if you are confirmed, you "would like to review the Department's position" in *Texas v. United States*, which challenges the ACA's constitutionality. You also said that you were open to reconsidering the Department's position in the case. (S. Hrg, Confirmation Hearing on the Nomination of William Barr to Be Attorney General (Jan. 15, 2019) Tr. at 301)

    a. Will you commit, if confirmed, to notifying Congress when you start and when you complete your review of the Department's position in *Texas v. United States*? Will you commit to notifying Congress what the basis is for your decision?

    b. If confirmed, do you commit to consulting with career Justice Department attorneys before making any final decision as to the Department's position in the case?

    RESPONSE: As I stated at my hearing, if confirmed, I will review the Department's position in *Texas v. United States*. I intend to engage in a thorough review, which will include receiving input from individuals throughout the Department and from other relevant agencies within the federal government.

53. The Justice Department announced in October 2018 that it planned to close the San Francisco field office of the Environment and Natural Resources Division. This office has focused on enforcing environmental laws and protecting public resources on the West Coast, particularly in California. I am deeply concerned that the closure of this office will allow polluters in California to avoid complying with our environmental laws.

    If confirmed, will you commit to seeing if an alternative location can be identified to keep the office in Northern California?

    RESPONSE: I am not familiar with the Department's decision to close the San Francisco field office of the Environment and Natural Resources Division, and therefore am not in a position to comment or make a commitment at this time. I am committed to the fair and evenhanded enforcement of federal environmental laws, in California and in all states.

54. You served in the Department of Justice at the time the Americans with Disabilities Act (ADA) was signed into law by President George H.W. Bush, on July 26, 1990. As you know, the ADA received broad, bipartisan support, passing the Senate by a vote of 91-6 and the House of Representatives by a vote of 377-28. When he signed the ADA,