

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

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

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

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

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

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

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

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

White Collar Crime

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

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

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

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

Presidential Records Act

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

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

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

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

Immigration

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

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

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

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

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

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

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

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

Trafficking

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

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

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

Opioid Epidemic

12. Congress will need to continue working with the Justice Department and local law enforcement officers combat the opioid epidemic.

- a. If confirmed as Attorney General, what steps will you take to combat the opioid epidemic?

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

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

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

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

QUESTIONS FROM SENATOR COONS

1. At your nomination hearing, you agreed to seek the advice of career ethics officials regarding whether you should recuse from the Special Counsel investigation. You testified that you did not think you would have an objection to (1) notifying the Senate Judiciary Committee once you receive the ethics officials' guidance, (2) telling the Committee what that guidance was, and (3) explaining whether or not you disagree with it. Now that you have had an opportunity to consult any applicable rules, will you agree to (1) notify this Committee once you receive the career ethics officials' guidance on recusal from the Special Counsel investigation, (2) inform us of the advice that you received from these career ethics officials, and (3) explain why you agree or disagree with it? If you contend that these notifications are not permitted, please cite the applicable rule.

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

I am not currently at the Department and have not spoken further with ethics officials nor studied the Department's practices on these matters. Though I am not familiar with the Department's policies regarding the disclosure to Congress of ethics advice or recusal decisions, my goal is to be as transparent as possible while following the Department's established policies and practices, and recognized Executive Branch confidentiality interests.

2. At your nomination hearing, you testified that you would share as much as possible of Special Counsel Mueller's report "consistent with the regulations and the law."
 - a. Which regulations and laws do you think may prevent you from sharing the report in its entirety?

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).

In addition, the Justice Manual, § 9-27.760, cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties. It is also my understanding that it is Department policy and practice not to criticize individuals for conduct that does not warrant prosecution.

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.

- b. If Special Counsel Mueller provides you with his report, and it contains information that you choose not to include in the Attorney General’s report that is released to the public, would you provide a log of the information withheld and the rule, regulation, or privilege justifying that it be withheld?

RESPONSE: If confirmed, I will consult with Deputy Attorney General Rod Rosenstein to better understand any prior consideration regarding the release of information from the Special Counsel, and I will evaluate the report from the Special Counsel when it is received.

3. If Donald Trump fires Special Counsel Mueller or orders you to fire Special Counsel Mueller without good cause, would you resign? Please answer yes or no.
 - a. If you would not resign, what would you do?

RESPONSE: I would resign.

- b. Will you agree to notify the Chairman and Ranking Member of the Senate Judiciary Committee if you believe Special Counsel Mueller has been removed without good cause? Please answer yes or no.

RESPONSE: Yes.

- c. If you learn that the White House is attempting to interfere with the investigation, will you report that information to Special Counsel Mueller and inform Congress? Please provide examples of what, in your view, would constitute inappropriate interference.

RESPONSE: If confirmed, I will ensure that the Special Counsel finishes his work, and that all of the Department's investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence. As I testified, I will follow the Special Counsel regulations scrupulously and in good faith.

4. If the President directed the FBI to stop investigating his National Security Advisor in order to hide the administration's Russia connections from the American people, is that illegal?

RESPONSE: As a general matter, depending on the facts and circumstances, it could be a breach of the President's obligation under the Constitution to faithfully execute the laws if he were to halt a lawful investigation for an improper purpose. The Department's investigative and prosecutorial decisions should always be based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and should be made without bias or inappropriate outside influence.

5. You were Attorney General when President Bush pardoned six administration officials charged with crimes in the Iran-Contra scandal, and you have said that you encouraged the President to issue those pardons. The Iran-Contra Independent Counsel called these pardons a "cover-up." He said they "undermine[] the principle that no man is above the law" and "demonstrate[] that powerful people with powerful allies can commit serious crimes in high office – deliberately abusing the public trust without consequence."
 - a. What factors would you consider when advising the President on whether to issue a pardon?
 - b. You testified that if a President issues a pardon as a quid pro quo to prevent incriminating testimony, that would be a crime. How should a President be held accountable for such a crime?

- c. Would it be permissible for President Trump to pardon Michael Flynn, Paul Manafort, or Michael Cohen if he did so to cover up his own criminal activity?
- d. Would it be permissible for President Trump to pardon himself?

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.

- 6. Chairman Graham, Senator Tillis, Senator Booker, and I have introduced the Special Counsel Independence and Integrity Act (S.71), which would codify the good-cause restriction on the Special Counsel's removal and make it clear that the Special Counsel can be reinstated if he is removed improperly. If this bill passes, would you commit to complying with that law?

RESPONSE: If confirmed, I will faithfully comply with all applicable laws and regulations.

- 7. When you were nominated to lead the Office of Legal Counsel, you told the Senate Judiciary Committee that you "fully accepted" the Supreme Court's ruling in *Morrison v. Olson*, 487 U.S. 654 (1988). Do you still accept the *Morrison* decision as good law?

RESPONSE: It is my understanding that the Supreme Court has not overruled *Morrison v. Olson*. 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.

- 8. Deputy Attorney General Rosenstein has said publicly that your June 2018 memorandum on obstruction of justice "had no impact" on the Special Counsel investigation. When I asked if you would order the Special Counsel's office to accept and follow the reasoning in your memorandum, you testified that you would "try to work it out with Bob Mueller" and "unless something violates the established practice of the department, [you] would have no ability to overrule that."

- a. Please confirm that if Special Counsel Mueller's theory of obstruction does not

violate an established practice of the Department of Justice, you will not overrule his interpretation of the law.

- b. Did any of the attorneys to whom you transmitted your June 2018 obstruction of justice memorandum respond to you? If so, please provide their responses.

RESPONSE: As I stated during my hearing before the Committee, if confirmed, I will follow the Special Counsel regulations scrupulously and in good faith, and I will not permit partisan politics, personal interests, or any other improper considerations to interfere with the Special Counsel's investigation.

As I explained in detail in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, I provided my June 8, 2018 memorandum to a number of different people, including officials at the Department of Justice and the President's lawyers. At the Department of Justice, Deputy Attorney General Rosenstein briefly acknowledged receipt of the memorandum and noted that his policy was not to comment publicly on the Special Counsel's investigation; Assistant Attorney General Engel briefly acknowledged receipt; and Solicitor General Francisco called me to say he was not involved in the Special Counsel's investigation and would not be reading the memorandum. To the best of my recollection, none of the President's lawyers responded directly to the memorandum, but as I have noted, I subsequently had follow up conversations in which I explained my views.

9. The same day that you sent your June 2018 obstruction of justice memorandum to Deputy Attorney General Rosenstein, former Attorney General Dick Thornburgh, who was your boss when you were the Deputy Attorney General, authored an op-ed published in the *Washington Post*, stating in part, "Mueller is the right person to investigate Russia's apparent assault on our democracy. . . . Mueller must put all applicable evidence before an impartial grand jury that will decide whether to bring charges. We must let him do his job."
 - a. Have you discussed your obstruction of justice memorandum with former Attorney General Thornburgh? If so, please describe this discussion.
 - b. Have you discussed former Attorney General Thornburgh's op-ed with him? If so, please describe this discussion.

RESPONSE: I have not discussed my June 8, 2018 memorandum or the op-ed with former Attorney General Thornburgh.

10. In the 26 years since you served as Attorney General, have you sent any other legal memoranda to Department of Justice leadership criticizing an investigation? If so, please provide a list of the investigations that these memoranda addressed and estimates of when the memoranda were transmitted.

RESPONSE: As I explained in detail in my January 14, 2019 letter to Chairman Graham and my January 10, 2019 letter to Ranking Member Feinstein, my June 8, 2018 memorandum did not criticize Special Counsel Mueller’s investigation as a general matter. Rather, it discussed a potential theory that I thought, based on publicly available information, he may be pursuing at the time. As I testified at my hearing before the Committee, over the years, I have weighed in on many legal matters with government officials. For example, I recently 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.

11. What is the remedy if the President violates his constitutional duty to faithfully execute the laws or violates an obstruction statute?

RESPONSE: The remedy would depend upon the facts and circumstances of a particular violation. They could arise in a court of law, or in Congress, or from the People.

12. During the hearing on his nomination to be Attorney General, then-Senator Sessions stated that he “did not have communications with the Russians,” but facts about meetings that he had with the Russian Ambassador later became public. Have you ever had any contact and/or communications with anyone from the Russian government? If so, please list these contacts and/or communications.

RESPONSE: In approximately 1980, the federal judge for whom I clerked introduced me to someone I understood to be a consular officer from the Soviet Embassy, and I subsequently had several lunches with him at the request of the FBI. I debriefed the FBI following each meeting. This matter has been included in all of my subsequent background investigations. Other than that, to the best of my recollection and knowledge, I have not had contact or communications with anyone from the Russian government.

13. An op-ed that you joined in November, entitled “We are former attorneys general. We salute Jeff Sessions.,” specifically praised Attorney General Sessions for changing the Department of Justice’s interpretation of Title VII to exclude protections for transgender individuals. Do you support interpreting Title VII to protect the LGBT individuals?

RESPONSE: I understand that the scope of Title VII’s prohibition on sex-based discrimination in the workplace is currently pending in litigation, and the Department’s position is that it does not cover LGBT individuals. Of course, the scope of Title VII and the question whether LGBT individuals should be protected from workplace discrimination as a matter of policy are two different issues.

14. In a 1995 law review article, you criticized a D.C. law that required Georgetown

University to “treat homosexual activist groups like any other student group.” Do you oppose laws that ensure equal treatment for LGBT student groups?

RESPONSE: Congress prescribes the scope of the federal laws that it enacts, including the protections provided by federal civil rights laws. The Department is bound to enforce federal law as enacted by Congress and interpreted by the Supreme Court. If confirmed, I will be firmly committed to enforcing the laws that Congress has enacted, including laws that protect LGBT Americans.

15. At your nomination hearing, you testified that you are “against discrimination against anyone because of some status,” including “their gender or their sexual orientation.” If you are confirmed, will the Department of Justice file amicus briefs defending discrimination against LGBT individuals, as it did in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* and *Zarda v. Altitude Express*?

RESPONSE: Because I am not currently at the Department, I am not privy to the details regarding the Department’s position in these matters. Further, it would not be appropriate to comment on ongoing litigation. As with all matters, any decision to file an amicus brief will be based upon a thorough analysis of the facts and the governing law.

16. In a speech that you gave as Attorney General, you said that public schools had suffered a “moral lobotomy” based on “extremist notions of separation of church and state.” However, you testified at your nomination hearing that you “believe in the separation of church and state.” Do you think that the Constitution permits public schools to endorse a particular religious view?

RESPONSE: I believe in the separation of church and state. The Supreme Court has held that a public school may not endorse any particular religious belief system.

17. You authored an op-ed that was published in the *Washington Post* claiming that President Trump’s first travel ban was legal and that it did not discriminate against Muslims. Do you still contend that there were “no plausible grounds for disputing the order’s lawfulness,” even though over a dozen judges found the order was unlawful?

RESPONSE: Yes, although the status of the President’s first order is no longer a live question. And in any event, the Supreme Court upheld the lawfulness of his revised Proclamation in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

18. You testified at your nomination hearing that you are concerned about “the willingness of some district court judges to wade into matters of national security where, in the past, courts would not have presumed to be enjoining those kinds of things,” specifically citing the travel ban. If a President issues a discriminatory executive order while claiming a justification of national security, do you agree that it is the responsibility of a court evaluating a challenge to that executive order to review its lawfulness and strike down the

executive order if the court finds it violates the Constitution or a statute?

RESPONSE: Judicial review of any executive order is dependent on a variety of threshold justiciability requirements, including standing, ripeness, and a statutory basis for review. If a court finds that the relevant threshold requirements are satisfied, it is appropriate for the court to review the order's lawfulness and strike it down if it violates the Constitution or a statute.

19. There are 67,000 Americans who are dying every year from drug overdoses. You once said “. . . I don't consider it an unjust sentence to put a [drug] courier . . . in prison for five years. The punishment fits the crime.” We cannot incarcerate our way out of the opioid crisis. How would you use the resources of the Department of Justice to help those suffering from addiction get the help they need?

RESPONSE: A comprehensive response to the opioid epidemic should involve multiple lines of effort. This Administration has a three-pronged strategy to combat the opioid epidemic: prevention and education; treatment and recovery; and enforcement and interdiction. These efforts should be complementary and mutually reinforcing. I agree that we cannot incarcerate our way out of the opioid epidemic, but I also think that law enforcement plays a critical role in protecting public safety and reducing access to deadly drugs. If confirmed, I will look at ways in which the Department's enforcement efforts can reinforce treatment and recovery efforts, including federal reentry programs. Under my leadership, the Department's Bureau of Justice Assistance will continue awarding grants to support treatment initiatives at the state and/or local level. Finally, the Department will seek opportunities to work with other government agencies, like HHS, on initiatives that will promote public health and public safety.

20. At your nomination hearing, you testified that you did not agree with the proffered percentage of nonviolent drug offenders within the federal prison population, stating that “sometimes the most readily provable charge is their drug-trafficking offenses rather than proving culpability of the whole gang for murder.” Is it your view that many individuals in prison for nonviolent drug offenses have committed violent crimes? If so, please provide the evidence you rely on in support of this contention.

RESPONSE: Based on my prior experience as Attorney General, I believe that indeed sometimes the most readily provable offense is drug trafficking, notwithstanding the fact that the crime involved violence. My understanding is that U.S. Sentencing Commission data shows that a number of convicted federal drug offenders carried or used a weapon during their offense, that many federal drug offenses resulted in bodily injury, and that many federal drug offenders have prior convictions for violent offenses.

21. Why did you sign a letter opposing passage of the Sentencing Reform and Corrections Act in 2015? Please explain the basis for your opposition to bipartisan sentencing reform.

RESPONSE: Respectfully, I do not oppose “bipartisan sentencing reform.” As discussed in my letter to Leader McConnell and Senator Reid, the letter raised a specific policy concern, namely that the retroactive provisions of the Sentencing Reform and Corrections Act of 2015 would have released violent felons from federal prison and realigned our sentencing structure in profound ways. If confirmed, I intend to faithfully enforce and implement the recently enacted FIRST STEP Act.

22. If confirmed, will you reevaluate the Department of Justice’s position to refuse to defend the Affordable Care Act and, in the process of doing so, consult with career officials who disagreed with the Department’s position not to defend the law?

RESPONSE: If confirmed, I will engage in a review of the Department’s position in this case, which will include receiving input from the Solicitor General and other individuals within the Department, as well as from other relevant agencies within the federal government. Beyond that, I am not in a position to comment or make a commitment at this time.

23. Last Congress, I was grateful to join with Senator Toomey to introduce the NICS Denial Notification Act (S.2492) – a bipartisan, commonsense bill that ensures that state and federal law enforcement are working together to prevent those who should not be able to buy a gun from getting one. However, these “lie and try” cases are rarely prosecuted at the federal level. Will you work with me on this bill to ensure that state law enforcement has the information to prosecute violations of “lie and try” laws?

RESPONSE: As I testified in my hearing, keeping firearms out of the hands of prohibited persons must be a priority. If confirmed, I look forward to working with you and other members of the Committee to effectively address this priority.

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

RESPONSE: I am not familiar with the specific studies you cite, but generally understand that the vast majority of federal firearms licensees comply with federal laws and regulations. I agree with your objective of focusing compliance and enforcement efforts on those licensees who do not comply with the law and, if confirmed, look forward to learning more about this issue from ATF.

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

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

RESPONSE: States and localities around the country are reviewing the way fines and fees are assessed in the criminal justice process and exploring ways to improve the delivery of justice to victims, defendants, and the community, including through reforms to the use of fines and fees. I think that states and localities are right to be reviewing this issue and the Department should work with them to ensure that these reforms are effective.

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

RESPONSE: The Eighth Amendment to the Constitution states that “Excessive bail shall not be required.” Consistent with the Constitution, I believe bail and other pre-trial restrictions should be imposed only to ensure public safety or that defendants comply with the justice process and appear in court as required. The Supreme Court has also reiterated that a defendant’s bail cannot be set higher than necessary to ensure the defendant’s presence at trial. That said, there is a diversity of practice on this issue in the states, in addition to considerable recent experimentation. I think the Department should work to ensure that any such reforms to money-bail systems effectively deliver justice to defendants, victims, and the community at large.

26. What would you do to ensure vigorous enforcement of the Ethics in Government Act, bribery and honest services laws, and anti-nepotism laws?

RESPONSE: I know from my prior experience in the Department about the important work done by federal prosecutors in enforcing anti-corruption laws. If confirmed, I look forward to working closely with the Department’s prosecutors to root out corruption.

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

RESPONSE: I 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 and safety of the American public. If confirmed, the Department will continue to focus on prosecution of the most serious cases of trademark counterfeiting, trade secret theft, copyright piracy and the related criminal statutes protecting intellectual property.

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

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

RESPONSE: My understanding is that the Department has prioritized the theft of valuable trade secrets, whether committed by an individual or as part of a systematic program of economic espionage directed by a foreign government. If confirmed, I look forward to supporting that important work.

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

RESPONSE: Please see my response to Question 28(a) above. If confirmed, I would examine this important issue to ensure the Department is working effectively – both by itself and in conjunction with other parts of the Executive Branch – to counter the threat of the criminal theft of trade secrets.

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

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

RESPONSE: I know that Attorney General Sessions tasked a group of experts from across the Department, the Cyber Digital Task Force, to work on this issue. If confirmed, I look forward to reviewing their initial report describing the Department's existing efforts and working to examine further improvements to make the Department even more effective as this problem continues to evolve.

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

RESPONSE: I am aware the Department has had many notable successes in extraditing cybercriminals. I am also aware that the Department has pursued charges against cybercriminals, even while they remain in countries with which we do not have an extradition treaty, such as China. If confirmed, I would support such efforts.

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

RESPONSE: It is important to devote sufficient resources to the Department's cyber experts. If confirmed, I would examine this important question, within the constraints of the President's budget.

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

RESPONSE: I know the Department has a number of lines of effort across many of its components to enhance cooperation with the private sector on fighting cybercrime. If confirmed, I look forward to learning more about existing efforts and finding ways to improve them.

30. The CLOUD Act, a bill that I worked hard on with Chairman Graham and Senator Whitehouse, became law last year. This legislation authorizes the U.S. government to enter into agreements with foreign partners to facilitate law enforcement access to electronic communications. No such agreements have been entered into yet. Will you explore using these agreements to further leverage cooperation on cybercrime investigations?

RESPONSE: Yes, I am committed to exploring using the authority provided by Congress to ensure that we and our allies have effective and efficient means to obtain cross-border access to data needed for criminal investigations.

31. You testified that protecting the integrity of elections would be one of your top priorities as Attorney General.

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

RESPONSE: I cannot comment on a hypothetical question. It also would not be appropriate for me to comment on any matter that may be the subject of a pending investigation or pending litigation within the Department of Justice. If confirmed, I am firmly committed to protecting and upholding the civil rights and voting rights of all Americans.

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

RESPONSE: If confirmed, I will be firmly committed to working with

Congress regarding legislation that supports the Department's mission and priorities.

32. You testified at your nomination hearing that it might be appropriate to prosecute a journalist if that journalist "has run through a red flag or something like that, knows that they're putting out stuff that will hurt the country." Please explain how you would evaluate if a journalist has "run through a red flag" or is putting out information that "will hurt the country."

RESPONSE: As I noted during my confirmation hearing, I understand that the Department has policies and practices governing the use of law enforcement tools, including subpoenas, court orders, and search warrants, to obtain information or records from or concerning members of the news media in criminal and civil investigations. These policies ensure our nation's security and protect the American people while at the same time safeguarding the freedom of the press. In light of the importance of the newsgathering process, I understand that the Department views the use of tools to seek evidence from or involving the news media as an extraordinary measure, using such tools only after all reasonable alternative investigative steps have been taken, and when the information sought is reasonably required for a successful investigation or prosecution.

33. While you were Attorney General, you were involved in litigation related to the detention of HIV-positive Haitians in Guantanamo Bay.
- a. In the litigation, the Justice Department represented to the Supreme Court that anyone who was identified as having a credible fear of persecution upon return to Haiti was to be brought to the United States for an asylum hearing. After making that representation, the administration changed its policy to hold HIV-positive Haitians, even those who had already been identified as having a credible fear of persecution, in Guantanamo Bay. Do you dispute that the Justice Department supported detentions of HIV-positive Haitians in Guantanamo Bay after representing to the Supreme Court that HIV-positive Haitians with a credible fear of persecution would be brought to the U.S. for an asylum hearing?

RESPONSE: I do not recall this specific alleged representation and believe it to be incorrect as stated here. As I noted at the hearing, federal law at the time generally provided that HIV-positive individuals were inadmissible to the United States. My best recollection is that the Administration was nonetheless attempting to admit HIV-positive individuals who could claim asylum where they could also make an individualized showing for admission under the Attorney General's waiver authority. The Clinton Administration continued these policies and defended them in court.

- b. In that same litigation, the Justice Department represented to the Supreme Court that tens of thousands of Haitians wanted to flee violence in their home country, drawn

by the “magnet effect” of a judicial decision issued by the Eastern District of New York. There was no credible evidence of this so-called magnet effect. Do you regret that the Justice Department made this unsubstantiated claim?

RESPONSE: I do not recall this specific alleged representation, but the Supreme Court itself noted that “the Haitian exodus expanded dramatically” during the six months after October 1991 and credited the President’s view that allowing fleeing Haitian emigrants into the United States “would have posed a life-threatening danger to thousands of persons embarking on long voyages in dangerous craft.”

34. At your nomination hearing, you testified that you had not looked at the issue of birthright citizenship. Please review this article by John Yoo, entitled “Settled law: Birthright citizenship and the 14th Amendment,” available at <https://www.aei.org/publication/settled-law-birthright-citizenship-and-the-14th-amendment/>.
- a. Do you agree that the text of the Fourteenth Amendment guarantees birthright citizenship?
 - b. Do you support the revocation or modification of the Fourteenth Amendment’s constitutional guarantee of birthright citizenship?

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, and if this matter arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

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

QUESTIONS FROM SENATOR BLUMENTHAL

1. In June 2018, the FCC's plan to abdicate its authority over net neutrality came into effect. While the FCC has signed a memorandum of understanding with the FTC over unfair and deceptive practices by internet service providers, these actions have left consumers without clear rules and effective enforcement over net neutrality violations.

While the FCC and FTC are primarily responsible for oversight over internet service providers, the Department of Justice has interceded in cases regarding net neutrality in the past. Most recently, the California Attorney General reached a temporary agreement with the Department of Justice to delay their law from taking effect until federal lawsuits over the FCC's rollback of net neutrality are resolved.

When you were in private practice, you were significantly involved with telecommunications companies and other interests that were implicated in net neutrality. Most significantly, you served as General Counsel and Executive Vice President of Verizon Communications for eight years, during which you argued against net neutrality based on concerns over its impact on Verizon's revenue. For example, you reportedly stated that net neutrality regulations might prevent broadband providers like Verizon from earning "an adequate return." You also recently served on the board of Time Warner, which is seeking to merge with AT&T. Both affiliations create the appearance of potential conflicts of interest with regard to oversight of internet service providers and enforcement of net neutrality.

- a. At least four states have passed their own net neutrality laws since the FCC abdicated its responsibility and still more are considering taking action to protect their residents. Do you intend to continue to pursue litigation to prevent states from enforcing their own laws to protect net neutrality? Under what specific conditions will the Department of Justice intervene against states that regulate discriminatory conduct within their state?

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

- b. Verizon and other internet service providers originally sued California to prevent the implementation of their net neutrality protections, and have been parties to most fights over the open internet. Considering the potential appearance of conflicts of

interest based on your previous professional affiliations and statements on net neutrality, will you commit to recuse yourself from any cases that involve the enforcement or defense any net neutrality laws?

RESPONSE: I have not been at Verizon for over a decade. Moreover, because I do not know the scope of the matter referenced in your question, and because I do not know all the facts and circumstances, I cannot commit to such a recusal at this time. If I am confirmed and a matter comes before me where I believe recusal might be warranted, I will review the facts, consult with career ethics officials at the Department, and will recuse myself whenever appropriate.

- c. Given concerns over the appearance of conflicts of interest, will you recuse yourself from any cases that involve specific claims of discriminatory conduct by Verizon that may come before the Department of Justice? Will you recuse yourself from any cases that involve specific claims of discriminatory conduct by other internet service providers?

RESPONSE: If confirmed, in any case where potential recusal issues arise, I will consult with career ethics officials at the Department and recuse myself whenever appropriate.

2. The Music Modernization Act was the result of years of bipartisan work by many members of the Judiciary Committee. The Department of Justice is currently conducting a sweeping review of 1,300 consent decrees, including the ASCAP and BMI consent decrees. These decrees play a critical role in allowing Americans to hear their favorite songs. I am concerned that terminating the ASCAP and BMI consent decrees could undermine the Music Modernization Act and permit the accumulation and abuse of market power.
 - a. Can you commit that the Department of Justice will work with Congress to develop an alternative framework prior to any action to terminate or modify the ASCAP and BMI consent decrees?

RESPONSE: I commit that, if I am confirmed, the Department will stand ready, as always, to provide this Committee with technical assistance on any legislative proposal regarding music licensing. I also commit that, 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.

3. The Federal Correctional Institution in Danbury, Connecticut is home to over 1,000 federal inmates. It hosts important education and literacy programs, including some programs that bring in students from outside the institution to study with students housed

inside the institution. Educational programs such as these are critical to restoring fairness to our criminal justice system and preparing inmates to contribute to society once have finished serving their time.

- a. Do you agree with me that education and literacy programs are important parts restoring fairness and opportunity to our criminal justice system?

RESPONSE: I have not had the opportunity to review the programs currently offered by the Bureau of Prisons and presently have no basis to disagree or agree with the statement. If I am confirmed, I will fully and fairly enforce the laws within the Department's jurisdiction.

- b. What steps will you take as Attorney General to ensure that programs like the ones at the Federal Correctional Institution in Danbury are provided with the necessary resources?

RESPONSE: If I am confirmed, I look forward to reviewing the Bureau of Prisons' resource allocation in this area, current educational offerings, and inmate needs.

- c. What steps will you take to expand successful prison education programs on a nationwide basis?

RESPONSE: I am not currently at the Department, and I am not familiar with details regarding educational programs provided by the Bureau of Prisons. Since I have not had the opportunity to review this matter, I am not in position to comment. If confirmed, I look forward to learning more about the educational programming offered by the Bureau of Prisons.

- d. Do you supporting restoring Pell grant funding to people in prison? Please explain the reasoning behind your position.

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

4. During your confirmation hearing I asked you if you maintained the position you expressed in 1991, that *Roe v. Wade* should be overruled. You responded:

“I said in 1991 that I thought as an original matter it had been wrongly decided, and that was, what, within 18 years of its decision? Now it's been 46 years, and the department has stopped, under Republican administration, stopped as a routine matter asking that it be overruled, and I don't see that being turned--you know, I don't see that being resumed.”

- a. Are you suggesting that you will not direct the Department of Justice to advocate to overturn *Roe*, or that it is merely unlikely that you will issue such an order?

RESPONSE: I would respond to any case presenting that question by consulting with the Solicitor General and other members of the Executive Branch to determine our position based on the facts of the case, the governing law, and the federal government's interests.

- b. In your answer at the hearing you indicated that proximity in time to a Supreme Court ruling determines when you respect a precedent. In your opinion, when between 18 and 46 years does the principal of *stare decisis* attach?

RESPONSE: All Supreme Court decisions (except those that have been overruled) are entitled to respect under principles of *stare decisis*.

- c. How do you determine when to give deference to a precedent?

RESPONSE: The Supreme 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.

- d. Does societal reliance on a precedent matter for *stare decisis* considerations?

RESPONSE: Yes, as noted above, it is one of several factors that are relevant under principles of *stare decisis*.

5. As you know, American student loan borrowers now collectively owe more than \$1.5 trillion in student debt. The U.S. Department of Education relies on a number of large private-sector financial services firms to manage accounts and collect payments for more than \$1.2 trillion dollars of this debt. These firms have been the target of investigations and litigation by a range of state law enforcement agencies and regulators, alleging widespread abuses. This led Connecticut to pass the first comprehensive consumer protections in this area.

In the face of mounting litigation, beginning in 2017, the United States adopted the new legal position that it was never the government's expectation that these firms comply with state consumer law, including state prohibitions against unfair and deceptive practices, because these laws were preempted by federal law. To this end, in early 2018, the U.S. Department of Justice took the extraordinary step of filing a "statement of interest" in a lawsuit brought by the Massachusetts Attorney General related to one company's alleged mishandling of the federal Public Service Loan Forgiveness program in which DOJ urged a state trial court judge to side with the student loan company over that state's top law enforcement official. In late 2018, DOJ filed a second "statement of interest" in a federal trial court supporting affirmative litigation brought by a student loan industry trade

association, which opposed an effort by the District of Columbia to empower its banking department to oversee the practices at these firms. In both instances, the United States departed from its long-held position supporting federalism and states' historic police powers in the student loan market-- a position that spanned administrations of both parties-- to side with the student loan industry.

- a. Will you commit to restoring the past position of the DOJ and refraining from filing further actions opposing state consumer protection litigation in the student loan market?

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

6. In recent years, Congressional investigations and leaked financial documents (i.e. Panama and Paradise Papers) have shown the extent to which the wealthiest citizens and corporations around the world—including the United States—use sophisticated financial strategies to avoid and evade taxes. Some of these moves are illegal, depriving the federal government of revenue and preventing the wealthiest from paying their fair share in the process.
 - a. Will you commit to making the full, fair, and consistent enforcement of tax laws a priority of the department during your tenure?

RESPONSE: I am generally aware that in the past several years the Tax Division has engaged in well-publicized and successful criminal and civil enforcement actions to combat offshore tax evasion. These efforts send the important message that violations of the tax laws will not be tolerated. If I am confirmed, I will work to support these efforts on behalf of the law-abiding taxpayers of this country.

7. Former White House Chief of Staff John Kelly recently stated that Attorney General Jeff Sessions “surprised” the Administration when he instituted a zero-tolerance policy that led to the family separation crisis on the border.
 - a. Can you commit to me that you will never support a policy that leads to mass family separation?

RESPONSE: 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.

8. President Trump recently issued a Presidential Proclamation barring certain individuals from receiving asylum. This policy could result in deporting asylum seekers back to their

death. In addition to being needlessly cruel, this Proclamation is illegal under our laws and under international law. For this reason, a federal judge has already issued a temporary restraining order blocking it from going into effect. A federal appeals court upheld this temporary restraining order. I have previously written to President Trump demanding that he revoke this unlawful Proclamation rather than continuing to fight a losing battle in court. So far, he has not done so.

- a. INA § 208(a)(1) is clear on this question. It says that any individual who arrives in the United States, “*whether or not at a designated port of arrival,*” may apply for asylum. Can you please explain how President Trump’s Proclamation is legal?
- b. Will you commit to advising the president to rescind this proclamation?

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

9. In 1990, you put forward an argument that Congress had very limited ability to control how the Executive spends congressionally appropriated funds. You stated – quote – “there may be an argument that if the president finds no appropriated funds within a given category to conduct activity, but there is a lot of money sitting somewhere else in another category — and both categories are within his constitutional purview — he may be able to use those funds.” In these remarks, you looked for a source of constitutional authority for Congress to control Executive spending, but you weren’t able to find one.
 - a. Do you believe that Congress has constitutional authority to limit or control the Executive’s spending?

RESPONSE: Answering this question in the abstract is difficult. As I stated during the hearing, I would need to examine the specific statute being invoked by Congress to determine whether Congress has the constitutional authority to impose the limits or controls that you mention. As I mentioned during the hearing, that law review article was intended to be a “thought piece” rather than advancing a position on a specific controversy.

- b. In your remarks in 1990, you asked a simple question regarding Congress’s appropriations power: “What is the source of the power to allocate only a set amount of money to the State Department and to restrict the money for that activity alone?” I would like you to answer your own question.

RESPONSE: The question to which you refer was merely a rhetorical question presented as part of a “thought piece,” and I have not recently studied the answer to that question in detail. I will note, however, that Congress’s power to appropriate funds comes from several sources, such as

the Appropriations Clause and the Taxing and Spending Clause. Congress also has authority to appropriate funds for the raising of armies. Whether and in what circumstances Congress may exercise these powers in a way that might interfere with the President’s own Constitutional authority by enacting limits on how funds are to be used is a hypothetical question that I cannot answer in the abstract.

10. Late last year, I wrote to the Department of Justice regarding Amazon’s use of most favored nation clauses in its contracts with third-party sellers on its site. I am deeply concerned that these hidden clauses are artificially raising prices on goods that millions of consumers buy every year. Amazon’s most favored nation clauses prevent sellers operating on its site from selling their goods at lower rates on other online marketplaces. This means that third-party merchants who sell on online marketplaces with lower transaction fees cannot pass on these savings to consumers. Relatedly, e-commerce sites that want to compete with Amazon to attract sellers will have trouble doing so by charging third-party sellers lower fees, given that third-party sellers could not pass these savings on to consumers. As a result, most favored nation clauses can also act as a barrier to entry for competitors. Roughly, five years ago, UK and German antitrust regulators opened an investigation into Amazon’s most favored nation clauses – and Amazon announced it would stop enforcing these most favored nation clauses in Europe. However, it continues to enforce them here in the United States.

- a. Do you agree that Amazon’s use of most-favored nation clauses in its contracts with third party sellers on its site could raise competition concerns?

RESPONSE: I have not had the opportunity to study Amazon’s use of most favored nation clauses and therefore have no opinion on the matter. If confirmed, I will discuss this issue with the Antitrust Division.

- b. Would you commit to investigating Amazon’s use of most-favored nation clauses in its contracts with third-party sellers on its site?

RESPONSE: If confirmed, I will commit to discussing this issue with the Antitrust Division. As in all matters, we would look at the individualized facts of the situation and the applicable law to determine what the appropriate next steps might be.

11. Corporate consolidation does not only threaten consumers; it threatens workers. At a hearing last October, I asked Assistant Attorney General Delrahim to provide an example of the last time labor market considerations were cited as the basis for rejecting a merger. Mr. Delrahim has still not provided a single example.

- a. Do you believe that labor market considerations are relevant to merger review?

RESPONSE: Yes. As I understand, the Department is committed to protecting competition in labor markets as well as product markets. I further understand that the Antitrust Division has identified labor market concerns in past enforcement efforts, including its challenges to the Anthem/Cigna merger in 2016 and the Aetna/Prudential merger in 1999.

- b. Can you commit to me that in every merger where the Department of Justice makes a second request, it will include a request for data related to labor market considerations?

RESPONSE: If confirmed, I will look forward to discussing with the Antitrust Division the types of data it seeks when issuing second requests.

- 12. I am deeply concerned about the growth of non-compete clauses, which block employees from switching to another employer in the same sector for a certain period of time. These clauses weaken workers' bargaining power once they are in the job, because workers often cannot credibly threaten to leave if their employer refuses to give them a raise or imposes poor working conditions. According to the Economic Policy Institute, roughly 30 million workers – including one in six workers without a college degree – are now covered by non-compete clauses. Just this past December, President Trump's administration released a report indicating that non-compete clauses can be harmful in particular contexts, such as the healthcare industry.

- a. Do you believe that non-compete clauses pose a threat to American workers?

RESPONSE: Although I believe there can be legitimate uses of non-compete clauses, they potentially can raise concerns for American workers in certain circumstances.

- b. What action do you intend to take regarding non-compete clauses?

RESPONSE: If I am confirmed, I will look forward to discussing this issue with the Antitrust Division.

- 13. Last month, we learned that Facebook has been selling more of users' personal data than previously disclosed. For example, it allowed Netflix and Spotify to read Facebook users' private messages. It is unconscionable and unacceptable that a company is able to act with such disregard for the privacy rights of its users. One reason that Facebook is able to get away with it is that they hold such a powerful market position. This allows them to impose poor privacy conditions on their users.

There is growing evidence that Facebook is willing to go to extreme lengths to protect its market power. Recently, the UK Parliament released documents showing Facebook's

ruthless attempts to shut down competitors. In 2013, Facebook was concerned about competition from Vine. A Facebook executive asked Mark Zuckerberg whether he could target Vine by shutting off Vine users' ability to find their friends via Facebook. Mr. Zuckerberg's response: "Yup, go for it."

- a. Do you believe this sort of action could constitute anticompetitive conduct?

RESPONSE: I am generally aware of these reports, but I have not studied these allegations in detail. As I explained at my hearing, however, I am aware of concerns many have expressed regarding how technology platform companies have taken shape and whether those companies' practices may raise antitrust concerns. If confirmed, I look forward to learning more about these matters.

14. When Americans use Google to search for products, the top result should be the one that best answers users' queries – not the result that is most profitable to Google. But there is growing concern that this is not the case. Just over a year ago, the European Union concluded that Google has been manipulating search results to favor its own comparison shopping service. Now, the European Union is reportedly investigating whether Google is unfairly demoting local competitors in its search results.

- a. Do you believe that there is sufficient evidence for the Department of Justice to act?

RESPONSE: I am generally aware of these assertions, but I have not studied them or the underlying facts in detail. If confirmed, I look forward to discussing these important issues with the Antitrust Division.

15. In a 2017 article, you wrote, "through legislative action, litigation, or judicial interpretation, secularists continually seek to eliminate laws that reflect traditional moral norms." According to your piece, secularists were attempting to, "establish moral relativism as the new orthodoxy" and in the process producing an explosion of crime, drugs, and venereal disease.

As an example of this trend, you discuss laws that, "seek to ratify, or put on an equal plane, conduct that previously was considered immoral. For example, "laws are proposed that treat a cohabitating couple exactly as one would a married couple. Landlords cannot make the distinction, and must rent to the former just as they would to the latter."

The implications of your statement for same-sex couples are troubling. At that time you wrote those words, same-sex couples were not allowed to get married. So, if landlords at that time were allowed to discriminate against unmarried couples, they would have been allowed to refuse to rent to any same-sex couple, essentially forcing millions of Americans to choose between living where they want and living with the person they love.

- a. Do you believe landlords should be able to discriminate against unmarried couples?

- b. Do you believe landlords should be able to discriminate against gay and lesbian Americans?
- c. If landlords can discriminate based on moral condemnation of unmarried couples and gay people, could a landlord refuse to rent to a Jew because he has a moral objection to that faith? If landlords should be allowed to express their moral beliefs by discriminating against groups they consider morally repugnant, where does that stop?

Another example of this trend you highlighted was, “the effort to apply District of Columbia law to compel Georgetown University to treat homosexual activist groups like any other student groups.” You argued that, “This kind of law dissolves any form of moral consensus in society.”

You argued that the law undermined a “moral consensus.” But D.C.’s law was passed by the city’s elected officials. My understanding is that it is broadly popular in the city, and I suspect it is broadly popular on Georgetown’s campus as well. If Georgetown were allowed to discriminate against LGBT organizations, it would be rejecting a moral consensus, not embracing one.

- d. In your view, is there a “moral consensus” against gay and lesbian student groups?
- e. What did you mean when you suggested that protections against discrimination “dissolve[] any form of moral consensus in society”?

RESPONSE: Respectfully, the above question mischaracterizes my views as expressed in the article in several respects. The quotes mentioned above are taken out of context. In addition, the article was written in 1995, not 2017, as your question suggests.

As I stated during my hearing, “We are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity. But we can only survive and thrive as Nation if we are mutually tolerant of each other’s differences – whether they be differences based on race, ethnicity, religion, sexual orientation, or political thinking. Each of us treasures our own freedom, but that freedom is most secure when we respect everyone else’s freedom.”

The above questions call for speculation, and I cannot speculate on hypothetical questions. If confirmed, I would faithfully enforce all laws that protect individuals against discrimination. As in all matters, if faced

with these issues at the Department, I would look at the individualized facts of the situation and follow the law and any policies of the Department in determining any position or policy.

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

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

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

RESPONSE: Yes.

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

RESPONSE: While I am not familiar with the current judicial-selection process, my understanding is that judicial candidates are not asked for their views on *Brown* or any other case.

17. The 14th Amendment states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States.” President Trump claims that “the 14th Amendment is very questionable as to whether or not somebody can come over and have a baby and immediately that baby is a citizen.”

- a. Do you agree with President Trump?

- b. Can the president eliminate 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, and if the issue arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

18. In a 2001 interview with the Miller Center at the University of Virginia, you discussed how you prepared to advise President George H.W. Bush to deploy the army to address the Rodney King riots in Los Angeles. You said that, “basically the President has to issue a proclamation telling people to cease and desist and go to their homes. . . And then if they don’t cease and desist, you’re allowed to use regular army.” This seems like remarkably cavalier position on the use of the American military against the American people.

- a. As you know, President Trump has expressed a willingness and desire to invoke national emergency powers to build a wall on the southern border. Would you advise him to do so?

RESPONSE: The President’s authority to declare a national emergency, and the authorities that are triggered by such a declaration, would depend upon the specific facts and circumstances at the time. I have not examined those facts and circumstances beyond what has been reported in the media, and, therefore, I am not in a position to comment on this matter.

- b. What factors would you consider before advising the president to declare a national emergency? What do you think constitutes a national emergency?

RESPONSE: Congress has authorized the President to declare a national emergency under the National Emergencies Act, and that declaration may trigger authorities under other statutes. The terms of those statutes, the precedents of prior Presidents, and the factual determinations by the appropriate agencies within the Executive Branch should all inform the President’s decision. I have not examined the facts and circumstances pertaining to security on the southern border with this issue in mind, and therefore, I am not in a position to further comment on what would constitute a national emergency. If confirmed, I will ensure that the Department’s advice on this subject is consistent with any applicable law, including the National Emergencies Act.

- c. In your opinion, what limits – if any – are there to the president’s use of the military in domestic matters?

RESPONSE: The Constitution and applicable statutes set forth the terms under which it is appropriate for the President to use the military in domestic matters. If confirmed, I will ensure that the Department of Justice’s advice is consistent with the Constitution and all other applicable law, including Title 10 of the U.S. Code and the Posse Comitatus Act.

19. Just months before the 1992 presidential election, several employees of the State Department — at the direction of the Assistant Secretary of State for Consular Affairs — searched a National Archives warehouse for then-candidate Bill Clinton’s passport files. According to the State Department Inspector General, the search was conducted “in the hope of turning up damaging information about Clinton that would help President Bush’s reelection campaign” — namely, “whether Clinton had ever written a letter at the time of the Vietnam War renouncing or considering renouncing his U.S. citizenship.”

In a 2001 interview, you said you were still bitter about this investigation. Specifically, you said, “the career people in the public integrity section had some kind of wacky theory,

a very broad theory that if the search was done for a political reason, it was improper.” You went on to say that you believe that, “if an executive official has the power to open a file and look in a file, it’s not illegal that he may have a political motivation in doing so.”

- a. Do you stand by your statement?
- b. Is it your view that law enforcement is free to investigate people to gather political intelligence for a campaign?

RESPONSE: As a general matter, I believe that attempts to impose criminal liability on political officials (whether in the Executive branch or in Congress) for performance of official duties based solely on the officials’ subjective intent raises difficult legal questions and can potentially create dangerous precedents. Nevertheless, in 1992, I personally requested the appointment of an independent counsel in connection with the “Passportgate” matter – an investigation that ultimately determined that no charges should be brought. In my view, it would not be appropriate for law enforcement to investigate people in order to gather political intelligence for a campaign.

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

QUESTIONS FROM SENATOR HIRONO

1. At your hearing you both told Senator Graham that you don't believe Robert Mueller would be involved in a "witch hunt," and expressed to me that you had sympathy for Donald Trump's calling it that.

You said, "the President is one that . . . has denied that there was any collusion and has been steadfast in that. . . . But I think it is understandable that if someone felt they were falsely accused, they would view an investigation as something like a witch hunt, where someone like you or me who does not know the facts, you know, might not use that term."

If you don't believe that Mr. Mueller would conduct an unfounded investigation, and if you know about the numbers of indictments and guilty pleas entered so far, why would you express sympathy for the President's insulting characterization of the Special Counsel's work?

RESPONSE: Neither Members of Congress, the public, nor I know all of the facts. That is why I believe that it is important that the Special Counsel be allowed to complete his investigation.

As I testified at the hearing, President Trump has repeatedly denied that there was collusion. It is understandable that someone who felt like he or she was being falsely accused would describe an investigation into him or her as a "witch hunt."

If confirmed, I will ensure that the Special Counsel finishes his work, and that all of the Department's investigative and prosecutorial decisions are based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual § 9-27.000), and that they are made free of bias or inappropriate outside influence.

2. You mentioned that you had lunch with Deputy Attorney Rod Rosenstein and tried to sell him on your theory that a President can never obstruct justice if his actions are among those properly delegated to the Chief Executive, even if they have a corrupt intent. You described his reaction as "sphinx-like." Did you think that reaction was improper, given the fact that you were not a Department official and had no basis to be involved in the case? Are you implying he should have reacted more positively to you? Why?

RESPONSE: While your characterization of my position is not accurate, Deputy Attorney General Rosenstein’s response was entirely proper and commendable.

3. To explain why you provided unsolicited input to narrow the scope of Special Counsel Mueller’s investigation – efforts that you noted were resisted by Deputy Attorney General Rosenstein – you asserted that you also “weighed in repeatedly to complain about the idea of prosecuting Senator Menendez” when your “friend . . . was his defense counsel.”
 - a. Do you think it is proper for non-Department of Justice (DOJ) officials, including former Attorneys General, to weigh in to seek to influence law enforcement decisions, particularly when such decisions have a personal benefit?

RESPONSE: Yes. Whether the former official is paid or unpaid—and I was not paid in either of these instances—it can be appropriate and is not unusual for former Department officials to provide their views to current Department officials on pending matters through a variety of means, including personal conversations, legal memoranda, editorial articles, white papers, and law review articles.

- b. Should you be confirmed, how will you respond when others give you unsolicited input or seek to influence Special Counsel Mueller’s investigation?

RESPONSE: I will consider the views raised and proceed in an appropriate manner.

4. In the 19-page unsolicited memo addressed to Justice Department officials that you distributed to Donald Trump’s private and White House Attorneys, you argued that “Mueller should not be permitted to demand that the President submit to interrogation about alleged obstruction” and that “[i]t is inconceivable to me that the Department could accept Mueller’s interpretation of §1512(c)(2). It is untenable as a matter of law and cannot provide a legitimate basis for interrogating the President.” Despite making such strong and unequivocal assertions, you claimed you did not know many facts about Special Counsel Mueller’s investigation.

You testified at your hearing that you “do not recall getting any confidential information about the investigation.” Please review your emails, notes, and any other relevant materials. Having reviewed those materials, did you receive any confidential information about Special Counsel Mueller’s investigation? Do you recall getting any information whatsoever about the investigation from anyone? If you did, who gave it to you?

RESPONSE: I based my memo on information available to the public at the time through news media reports. To the best of my recollection, I did not receive any non-public or confidential information regarding the Special Counsel’s investigation.

5. At your hearing, you mentioned two meetings you had with Donald Trump.
- a. Are those two meetings that you mentioned at the hearing the only times you have met with Donald Trump? If not, when else have you met with him? Where?
 - b. Have you had any telephone conversations with Donald Trump? If so, where? When?
 - c. Please tell us the details of all of your meetings and telephone calls with the President, including the following:
 - Where were the meetings?
 - Who was present for the meetings and the phone calls?
 - How long did each meeting or phone call last?
 - What was discussed?
 - What promises, if any, did the President ask you to make?
 - Did the President ask for your loyalty?
 - Did he make any threats?
 - Do you have any notes from any of the meetings or phone calls?
 - Did anyone else in the meetings or on the phone calls take notes?

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

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

On December 5, 2018, following President Bush's funeral, President Trump asked me

to stop by the White House. We spoke about a variety of issues, and were joined for much of the discussion by then-White House Counsel Emmet Flood and Vice President Pence. We have also spoken via phone several times as part of the selection and nomination process for the Attorney General position. In all of these conversations, there was no discussion of the substance of the Special Counsel’s investigation. The President has not asked me my views about any aspect of the investigation, and he has not asked me about what I would do about anything in the investigation.

The President has never sought any assurances, promises, or commitments from me of any kind, either express or implied, and I have not given him any, other than that I would run the Department of Justice with professionalism and integrity. The President has never asked for my “loyalty,” nor has he made any “threats” to me.

6. The former head of the Office of Government Ethics, Walter Shaub, believes you were wrong in your testimony about government ethics rules. You testified that you would seek the opinion of ethics officials about whether or not you should recuse yourself from the Special Counsel’s investigation, but that you would not necessarily follow it. You reserved the right to ignore their advice and decide for yourself. Mr. Shaub points to 5 C.F.R. 2635.502(c), which requires you to follow the guidance of your designated agency ethics official. Is Mr. Shaub correct? If not, why not?

RESPONSE No. Under the governing regulations, the Attorney General, as the head of an agency, makes the final decision on whether to recuse under 5 C.F.R. § 2635.502. See 5 C.F.R. § 2635.102 (“Any provision [of this part] that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.”). In addition, Mr. Shaub is citing a regulation, 5 C.F.R. § 2635.502(c), which applies only to appearance problems arising from a financial interest or a covered relationship. When other circumstances may raise a question regarding an employee’s impartiality, the employee follows the procedures of section 2635.502, but the ultimate recusal decision is left to the employee himself. See 5 C.F.R. § 2635.502(a)(2).

7. In light of 5 C.F.R. 2635.502(c), will you commit to following the opinion of career ethics officials on whether or not you should recuse yourself from the Special Counsel’s investigation?

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

8. You testified at your hearing that you think former FBI Director James Comey “is an

extremely gifted man who has served the country with distinction in many roles,” although you disagreed with some actions he took in the investigation of Hillary Clinton’s emails. What do you think about the President’s insults of Mr. Comey? The President has referred to the former FBI Director as “Leakin’ James Comey,” called him a liar multiple times, a “bad guy,” a “slime ball,” “slippery,” and “shady.”

RESPONSE: As I stated during my hearing before the Committee, I agreed with the conclusions in Deputy Attorney General Rosenstein’s memorandum regarding former FBI Director Comey’s handling of the Clinton email investigation. As a general matter, I do not believe that it is the role of the Attorney General to comment on, criticize, or censor the President’s public statements.

9. At your hearing, you testified to Senator Cornyn that you “completely agree with” the memo Rod Rosenstein wrote justifying former FBI Director James Comey’s firing.

But do you believe Donald Trump really fired James Comey because he was too harsh on Hillary Clinton, or because he didn’t follow Department of Justice guidelines? Do you discount the other explanations Donald Trump has given – specifically, that he told Lester Holt of NBC on air that he fired Mr. Comey because of “this Russia thing;” and that he told the Russian Ambassador and Russian Foreign Minister in the Oval Office that he fired Mr. Comey, referring to the former FBI Director as “crazy, a real nut job,” and saying, “I faced great pressure because of Russia. That’s taken off.”?

RESPONSE: I do not know whether the President’s decision to remove former FBI Director Comey is an aspect of the Special Counsel’s ongoing investigation. If confirmed, it is possible that I will be supervising that investigation as Attorney General under applicable regulations. Accordingly, as a nominee, it would not be appropriate for me to answer your question.

10. You told Sen. Feinstein at your hearing that you would “[a]bsolutely” commit “to ensuring that Special Counsel Mueller is not terminated without good cause consistent with Department regulations.”

Would the President’s displeasure with a lawful action by Special Counsel Mueller taken in accordance with Justice Department regulations constitute good cause?

RESPONSE: No.

11. You told Senator Durbin at your hearing that there is nothing wrong with an Attorney General taking a policy position that happened to have a political benefit to it. But do you agree that an Attorney General should not formulate policies just **BECAUSE** they are politically advantageous?

RESPONSE: Yes.

12. At your hearing, you told Senator Whitehouse that with respect to finding out the sources of payments to Acting Attorney General Whitaker, “my first consideration always is where do you – where do you draw the line, and also what are the implications for other kinds of entities because, you know, there are membership groups and First Amendment interests” Why is that your FIRST consideration? What about transparency and confidence in the system? Shouldn’t they be your first considerations in addressing conflicts of interest by the nation’s top law enforcement official?

RESPONSE: The public’s interest in “transparency and confidence in the system” are important considerations when considering conflict-of-interest issues, as are American’s constitutional rights, including those guaranteed by the First Amendment.

13. I asked you at your hearing whether you believe birthright citizenship is guaranteed by the Fourteenth Amendment. You said you had not looked at the issue and that you would ask the Justice Department’s Office of Legal Counsel to advise you on “whether it is something that is appropriate for legislation.”

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

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

RESPONSE: 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, and if the issue arose, I would consult with the Office of Legal Counsel and others before forming my own conclusion.

14. When you were Attorney General for President George H.W. Bush, you recommended that he pardon people implicated in the Iran-Contra scandal. You told the Miller Center about it, saying, “I went over and told the President I thought he should not only pardon Caspar Weinberger, but while he was at it, he should pardon about five others. I favored the broadest — There were some people arguing just for Weinberger, and I said, ‘No, in for a penny, in for a pound.’ Elliot[t] Abrams was one I felt had been very unjustly treated.”

President Bush issued the pardons you recommended, and they were widely viewed as having the effect of protecting the President and others from having to testify in any related cases. At the time the pardons were issued, Independent Counsel Lawrence Walsh, criticized them, and said, “The Iran-Contra cover-up, which has continued for more than six years, has now been completed.”

- a. Why did you recommend the Iran-Contra pardons?

RESPONSE: President George H.W. Bush issued an eloquent proclamation explaining why he believed those pardons were required by “honor, decency, and fairness.” Among his reasons were that the United States had just won the Cold War and the individuals he pardoned had long and distinguished careers in that global effort. As President Bush explained, the individuals he pardoned had four common denominators: (1) they acted out of patriotism; (2) they did not seek or obtain any profit; (3) each had a long record of distinguished service; and (4) they had already paid a price grossly disproportionate to any misdeeds.

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

RESPONSE: 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. If confirmed, I would advise the President to carefully consider these and other appropriate factors in exercising his pardon power.

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

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

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

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

Please also see my answer to Question 14(b) above.

- e. Will you recommend Donald Trump pardon any of the people convicted, indicted, or under investigation by Special Counsel Robert Mueller or any of the related cases in other districts that relate to President Trump’s business, foundation, campaign, inauguration, administration, family, or associates?

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

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

- a. Since you agreed that you would “vigorously enforce the Voting Rights Act,” should you be confirmed, will you commit to asking the Voting Rights Section of the Civil Rights Division to present to you all the instances where the Justice Department has been asked to initiate Section 2 claims under the Voting Rights Act and allowing the career attorneys in the Voting Rights Section to bring claims where appropriate?

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

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

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

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

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

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

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

I also understand from publicly available information that the Supreme Court upheld the Department’s position in *Husted v. A. Philip Randolph Institute*.

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

RESPONSE: I have not studied this issue and therefore have no basis to reach a conclusion on it.

17. In a 2017 report entitled *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, the Civil Rights Division explained that “its experience demonstrates that court-enforceable consent decrees are most effective in ensuring accountability, transparency in implementation, and flexibility for accomplishing complex institutional reforms. Federal court oversight is often critical to address broad and deeply entrenched problems and to ensure the credibility of the reform agreement’s mandates.” But last November, just before leaving the Department, former Attorney General Jeff Sessions issued a memo that drastically limited use of consent decrees to bring police departments into compliance with the Constitution. At your hearing, you stated that you agreed with Mr. Sessions’s memo and questioned whether the policy changes in the memo would make it tougher to enter into consent decrees for pattern or practice violations.

- a. Do you agree with the Civil Rights Division’s report that based on its experience, “court-enforceable consent decrees are most effective” in accomplishing complex institutional reforms in a transparent way that ensures accountability?

RESPONSE: I am not familiar with this study and, beyond what I have seen reported in the media, have no knowledge of the facts and circumstances surrounding these issues. As a result, I am not in a position to comment on this matter.

- b. Despite the Civil Rights Division’s finding regarding the historical effectiveness of consent decrees, Mr. Sessions’s memo warns that “the Department should exercise special caution before entering into a consent decree with a state or local governmental entity.” Among other changes, it requires any consent decrees to be approved not only by the Assistant Attorney General for Civil Rights or the U.S. Attorney, but also by the Deputy Attorney General or the Associate Attorney General. Would you now agree that that Mr. Sessions’s memo imposes more stringent requirements for the Civil Rights Division to pursue consent decrees, making it harder to enter into consent decrees for pattern or practice violations? If not, please explain.

RESPONSE: Please see my response to Question 18(a) above.

- c. At your hearing, you recognized that “the Department has a role in pattern and practice violations.” Please specify what role you believe the Civil Rights Division should play in pattern or practice violations.

RESPONSE: In its discharge of its legal obligations, the Department should investigate all allegations that fall within the Department’s jurisdiction. If confirmed, I would work vigorously to uphold and enforce the federal laws within the Civil Rights Division’s jurisdiction.

18. Former Attorney General Sessions eliminated a highly effective program handled by the Office of Community Oriented Policing Services—also known as the COPS Office—that allowed local police departments to voluntarily work with Justice Department officials to

improve trust between police and the public without court supervision and consent decrees. Former head of the Justice Department's Civil Rights Division Vanita Gupta criticized this decision, saying "[e]nding programs that help build trust between police and the communities they serve will only hurt public safety."

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

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

RESPONSE: As I am not currently at the Department, I am not familiar with the details of this particular program. If confirmed, I look forward to learning more about this issue. It is my understanding that the COPS Office and its program efforts continue to promote police and community engagement promoting responsibility and accountability. Working with law enforcement agencies to promote effective crime fighting, combined with a strong community engagement partnership, is a promising approach and creates mutual benefits for the law enforcement agencies and the communities being served.

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

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

RESPONSE: As I am not currently at the Department, I have no knowledge of the facts and circumstances surrounding these issues beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this specific matter. I note that Congress has enacted statutes that expressly impose disparate-impact liability, and the Supreme Court has recognized that other statutes also

impose disparate-impact liability. The Department is charged with enforcing all of the laws that Congress has enacted where warranted by the facts, the law, and Department policies and priorities. As with all matters, any decision to pursue an enforcement action based upon disparate-impact liability will be based upon a thorough analysis of the law, the facts, and Department policies and priorities.

20. Last July, the Justice and Education Departments rescinded policy guidelines promoting diversity in education. This was in the context of a lawsuit brought by a conservative organization to challenge Harvard’s diversity admissions policies. When you worked for the Reagan administration you co-wrote a memo arguing that you “want[ed] a color blind society” and did not “embrace the kind of social engineering that calls for quotas, preferential hiring and the other approaches that do nothing but aim discrimination at other racial groups.”
- a. Is it your view that policies that promote diversity are the same as discrimination against other racial groups?
 - b. If confirmed, will you commit to not intervening in the Harvard lawsuit or others like it?

RESPONSE: In my written testimony to the Committee, I emphasized the benefits of a diverse society. Specifically, I stated: “We are a pluralistic and diverse community and becoming ever more so. That is, of course, a good thing – indeed, it is part of our collective American identity.” I do not believe that policies that promote diversity must necessarily result in discrimination against other groups. It is my understanding that the lawsuit referenced in your question is currently pending, and that the Department of Justice has filed a statement of interest. In light of this, it would not be appropriate for me to comment further.

21. The Justice Department includes the Office on Violence Against Women (OVW), which currently administers 25 grant programs authorized by the Violence Against Women Act (VAWA) and subsequent legislation. VAWA protects and provides services to survivors of dating violence, domestic violence, sexual violence, and stalking – four issues that impact people of all genders and sexual orientations. The law also prohibits discrimination on the “basis of actual or perceived race, color, religion, national origin, sex, gender identity..., sexual orientation, or disability.”
- a. Do you believe that VAWA’s protections should be extended to LGBTQ survivors of violence more fully than the current level?

RESPONSE: I have not studied this issue, however, it is my understanding that the grant programs administered by the Office on Violence Against Women (OVW) improve responses to sexual assault, domestic violence, dating violence, and stalking against all victims, including providing services for all victims. The 2013

reauthorization of VAWA, in addition to enacting the nondiscrimination provision, expanded VAWA's definition of underserved populations to include populations who face barriers in accessing services because of sexual orientation and gender identity. If confirmed, I look forward to learning more about this issue and the needs of victims and the work of the Department.

- b. Should you be confirmed, how will you ensure that LGBTQ survivors of violence are included and represented in the services of OVW?

RESPONSE: If I am confirmed, I will enforce all federal laws, including the 2013 reauthorization of VAWA. Although I am not currently at the Department, it is my understanding that programs funded by OVW have always served all victims, and VAWA contains provisions specifically addressing the provision of services to victims underserved because of sexual orientation and gender identity. If I am confirmed, I will ensure that VAWA programs, and the funds made available for them by Congress, are employed in the most effective manner possible in furtherance of their stated missions.

22. Recent surveys of law enforcement officials, court officials, legal service providers, and victim advocates have found that fear of immigration enforcement is a significant barrier for immigrant survivors of sexual assault and domestic violence to seek help from law enforcement and the legal system. The immigration provisions of the Violence Against Women Act were enacted to address how the immigration process can be used by domestic violence, sexual assault, dating violence and stalking abusers to further perpetrate abuse and maintain control over their victims.

If you are confirmed, what steps would you take to support access for vulnerable victims to VAWA's protections for non-citizen victims of domestic violence, sexual assault, dating violence, and stalking?

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

23. Native Americans experience higher rates of domestic violence and sexual assault. According to a 2016 National Institute of Justice study, 56.1% of American Indian and Alaska Native women have experienced sexual violence in their lifetimes.

Should you be confirmed, what steps will you take to ensure that the Office on Violence Against Women addresses the needs of Native Hawaiian, Alaska Natives, and American Indian survivors of domestic violence and sexual assault?

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

24. When you left the Reagan Administration's Domestic Policy Council, you talked derisively about women's issues, calling feminist agenda items "pernicious" and saying, "I think the whole label women's issues is a crock."
- a. Do you still believe issues of equality for women in the workplace and elsewhere are a "crock"?
 - b. Do you believe women are discriminated against?
 - c. What is your view of the "Me Too" movement?
 - d. What do you think the role of the Justice Department should be in ensuring equality for women, and ensuring harassment-free workplaces and industries?

RESPONSE: As the father of three daughters, all of whom are practicing attorneys, I have always believed strongly in the issue of equality for women in the workplace and elsewhere. It is an unfortunate fact that women historically have been discriminated against in a number of areas, including the workplace. Although we have made great strides as a society over the years, work remains to be done, as the "Me Too" movement and others have dramatically demonstrated. If confirmed, I will continue the Department of Justice's important work enforcing the federal civil rights laws, including with respect to sex-based discrimination.

25. At your hearing, Sen. Blumenthal asked you if you would defend *Roe v. Wade* if it were challenged. You responded, without answering his question, stating: "Would I defend *Roe v. Wade*? I mean, 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." You testified in 1992 that you believed the Supreme Court's decision in *Planned Parenthood v. Casey* "didn't go far enough" in allowing restrictions on abortions and that "*Roe v. Wade* should be overruled." Currently there are efforts to effectively gut *Roe* by narrowing it. For example, in last March, Mississippi enacted one of the most restrictive abortion laws in the country – a ban on abortions after 15 weeks. In striking down the law, the federal judge observed: "The State chose to pass a law it knew was unconstitutional to endorse a decades-long campaign, fueled by national interest groups, to ask the Supreme Court to overturn *Roe v.*

Wade.”

Should you be confirmed, if a case came before the Supreme Court or a lower court that presented the possibility of narrowing *Roe v. Wade*, would you have the Solicitor General or a DOJ component weigh in and argue for narrowing the scope of *Roe*, even if the case did not involve a federal statute or program?

RESPONSE: As I stated at the hearing, I would respond to any such case by consulting with the Solicitor General and other relevant members of the Executive Branch to determine our position based on the facts of the case, the governing law, and the federal government’s interests.

26. The Justice Department has the responsibility for enforcing the Americans with Disabilities Act (ADA), one of the most successful civil rights laws passed in the United States. It has integrated people with disabilities into American life in ways they had not been before.

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

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

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

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

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

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

RESPONSE: Please see my response to Question 26(b) above.

27. You criticized former Acting Attorney General Sally Yates for refusing to defend Donald Trump’s Muslim Ban because she did not think it was constitutional. But at your 1991 confirmation hearing, you told Senator Paul Simon that you would do the same. He asked you, “...would you automatically defend [a statute] even if you believe it is unconstitutional?” You responded, “No. In fact, I have told agencies I wouldn’t defend regulations, not only if they raise constitutional questions, but if I don’t think the regulation

is consistent with Congress' intent. If the statute requires a certain action and if a regulation in my view is not consistent with the statute, then there is a legal problem with it.”

Why did you criticize Sally Yates for doing what you told Senator Simon you would do?

RESPONSE: Your question compares commentary addressing two very different scenarios. As I explained in my op-ed, acting Attorney General Yates refused to defend an executive order signed by the President. If one or more of the political branches, such as the president or Congress, take an action that is reasonably defensible under the law, such as by issuing an executive order or passing a statute, then I believe that action is entitled to considerable weight and that the Department of Justice generally has an obligation to defend it in good faith. A different situation is presented by a regulation that is inconsistent with an underlying statute. In such a scenario, a federal agency arguably has taken an action that is inconsistent with the will of two political branches – both the president and Congress – as expressed in a statute. As I explained to Senator Simon, on those facts, the Department of Justice may be justified in refusing to defend the regulation based on that inconsistency.

28. More than a year after the 2016 election, you told the New York Times, “I have long believed that the predicate for investigating the uranium deal, as well as the foundation, is far stronger than any basis for investigating so-called ‘collusion.’” Both Senator Leahy and Senator Blumenthal asked you about this at your hearing, but I found your answers unclear.
- a. Can you explain clearly and succinctly exactly what you believed the predicate for investigating the “uranium deal” and the Clinton Foundation were?
 - b. What evidence did you have to support your contention?
 - c. Where did you get that evidence?
 - d. What evidence supporting an investigation into the Trump campaign’s possible collusion with Russia were you comparing it to?
 - e. What was your standard for comparison?
 - f. Now that you’re aware of all of the evidence of contacts and cooperation between Russian officials (many in Russian intelligence) and high-ranking officials of the Trump campaign (Paul Manafort, Jared Kushner, Donald Trump, Jr., and Rick Gates, to name a few), has your assessment of the strength of the predicate for investigating possible conspiracy changed?

RESPONSE: My November 2017 comments to the New York Times were based on

media reporting regarding the Uranium One case and the Special Counsel’s investigation. I did not have any information regarding the actual predicates for either matter. As I explained during my hearing before the Committee, the point I was attempting to make in my comments was that the Department of Justice should apply the rules for commencing investigations in a fair and evenhanded manner. Politics should never be part of the analysis of whether to launch a particular criminal investigation or prosecution. I am not aware of the extent to which the Uranium One case has been pursued by the Department of Justice, but as I noted during my hearing, it is my understanding from public reporting that U.S. Attorney John Huber may be looking into the matter.

As I stated during my hearing, I believe that it is in the best interest of everyone, the president, Congress, and the American people, that the investigation into Russian attempts to interfere in the 2016 election be resolved by allowing the Special Counsel to complete his work.

29. At your hearing, you promised Senator Graham you would “look in to see what happened in 2016.”
- a. What exactly have you agreed to investigate?
 - b. How will it be different from any existing investigations into what the FBI was investigating related to the 2016 elections?
 - c. How will it be different from the DOJ Inspector General’s investigation into “Various Actions by the Federal Bureau of Investigation and the Department of Justice in Advance of the 2016 Election,” on which a report was issued in June 2018?

RESPONSE: I did not commit to conduct any investigations; I promised only to look into issues of concern to the Chairman and noted that an investigation may be underway right now.

In the hearing, Chairman Graham raised the issue of numerous inappropriate text messages exchanged by two FBI employees that appear to document personal or political bias for Secretary Clinton and prejudice against President Trump. Chairman Graham also spoke to the FBI’s potential use of the Steele-authored “dossier” as a basis to obtain a Foreign Intelligence Surveillance Act (FISA) warrant from the FISA Court. FBI investigations must be based on the law and the facts, and should be conducted without regard to political favoritism. If confirmed, I will seek to better understand what internal reviews of these and related matters were undertaken, including any investigations conducted by the Inspector General, United States Attorney John Huber, and the Department’s ethics and professional responsibility offices.

30. You also agreed at your hearing to look into a FISA warrant issued in relation to an investigation into Carter Page.

- a. What exactly have you agreed to investigate?
- b. What evidence do you have to doubt the integrity of a decision made by the Foreign Intelligence Surveillance Court (FISC)?
- c. Do you think it is wise to launch a politically-motivated investigation into decisions by the FISC?

RESPONSE: Please see my response to Question 29 above.

31. If Donald Trump declares a national emergency based on the crisis he has manufactured at the southern U.S. border, will you defend it, should you be confirmed?

RESPONSE: The legality of any hypothetical declaration of national emergency would depend on the specific facts and circumstances at the time. I have no knowledge of whether a national emergency will be declared nor of the facts and circumstances relevant to such a declaration beyond what I have seen reported in the news media and, therefore, am not in a position to comment on this matter.

32. When I asked you at your hearing whether you agreed with former Attorney General Sessions's zero-tolerance policy that resulted in the separation of children from their parents, you replied that you "would have to see what the basis was for those decisions" to determine whether you agreed with the policy and would continue them if you were confirmed.

You then implied that family separations were no longer a problem because the Department of Homeland Security was currently not referring migrant families for prosecution and therefore, the Justice Department's policy of prosecuting all referrals for illegal entry under its zero-tolerance policy would not result in separating families.

- a. What more information do you need to know about the zero-tolerance policy that resulted in the separation of more than 2,000 children from their parents in order to determine whether you agree with that policy and whether you would continue it, if confirmed?

RESPONSE: As a private citizen, my knowledge of the Zero Tolerance Initiative is based on what is publicly available and what has been reported by news media.

Prior to making any judgment on the policy, I would need to review relevant statistics and data and understand other relevant factors and considerations, as well as review any developments in immigration law. I also note that President Trump's June 20, 2018 Executive Order directed that families should be kept together, to the extent practicable, during the pendency of any criminal or immigration matters stemming from an alien's entry.

- b. If the Department of Homeland Security changed course again and referred families for prosecution of illegal entry, would you continue the zero tolerance policy, knowing that it would result in children being separated from their parents?

RESPONSE: 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. If confirmed, I will evaluate this policy and other directives to determine how best to continue enforcement of the United States' immigration laws while balancing the Department's other priorities and resources.

- c. Do you believe that the zero-tolerance policy of prosecuting *all* Department of Homeland Security referrals of illegal reentry is an appropriate use of the Justice Department's limited resources? If yes, will you agree to provide the Senate Judiciary Committee a review of the impact of this policy on federal prosecutions across the Justice Department within 120 days, should you be confirmed?

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. If confirmed, I will evaluate this policy and other directives to determine how best to continue enforcement of the United States' immigration laws while balancing the Department's other priorities and resources.

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

RESPONSE: The Administration has deemed enforcement of immigration-related offenses a priority. If confirmed, I will evaluate this memo and other directives to determine how best to prioritize immigration enforcement while balancing the Department's other