

Nomination of Senator Jeff Sessions to be Attorney General of the United States
Questions for the Record
Submitted January 30, 2017

QUESTIONS FROM SENATOR COONS

1. In response to Question for the Record 1(b) regarding the use of solitary confinement, you stated that “[t]he need to maintain safety is especially true for juveniles, who often present unique correctional challenges.”
 - a. Why do you believe that there is a greater need for maintaining safety for juveniles compared to other incarcerated people?
 - b. Why do you believe that there are “unique correctional challenges” presented by incarceration of juveniles that impact the need for the use of solitary confinement?
 - c. What are these “unique correctional challenges”?

RESPONSE to (a) – (c): There have been studies and research demonstrating that juveniles represent unique incarceration challenges due to the fact that they are usually in earlier stages of psychological, mental, and physical development, and therefore can be particularly vulnerable, especially to the danger of suicide. If I am fortunate enough to be confirmed as Attorney General, I will evaluate these studies and our juvenile justice practices to ensure that our incarceration programs for juveniles are safe and effective.

2. Question for the Record 2 noted that individuals are being jailed throughout the country when they are unable to pay a variety of court fines and fees, often with little or no attempt to learn whether these individuals could afford to pay or to work out alternatives to incarceration. In your response, you stated that you would “make every effort to protect the constitutional rights of individuals in the federal criminal justice system.” However, this is not a problem confined to the federal criminal justice system. For example, a Department of Justice report (available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) found that traffic offenses such as expired license plates and failure to register a vehicle “comprised the majority of offenses that led to a[n arrest] warrant” in Ferguson, Missouri, besides Failure to Appear ordinance violations. If you are confirmed, how will the Department of Justice work to end the incarceration of individuals for failure to pay fines and court fees when they cannot afford to pay them?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will evaluate such practices to ensure that the constitutional rights of all incarcerated individuals are protected.

3. Question for the Record 3 asked “how” you would improve access to justice for indigent criminal and civil defendants. Your response stated that you would “work to ensure that the constitutional rights of defendants are protected.”
 - a. What affirmative steps will you take to improve access to justice?
 - b. How will you support the work of the Department of Justice Office for Access to Justice?

RESPONSE to (a) – (b): I am not familiar with the inner-workings or current practices of the Office for Access to Justice, so it would be difficult for me to opine as to how these practices could be improved or supported. If I am fortunate enough to be confirmed as Attorney General, I will evaluate current practices or policies in place by the Department and the effectiveness of those practices to aid in the administration of justice.

4. With respect to Question for the Record 4, you previously stated you are “generally familiar with the Cole memorandum” but declined to explain whether you would follow the Department of Justice’s established practice of focusing Controlled Substance Act enforcement to address the most significant threats. The Cole memorandum is available at <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.
 - a. Do you agree that the Department of Justice’s resources are best focused on “significant threats” and that individuals who use medical marijuana in accordance with state law do not present such a threat?
 - b. Do you believe that prosecution of the seriously ill is a good use of the Department of Justice’s limited resources?

RESPONSE to (a) – (b): If I am fortunate enough to be confirmed, I would endeavor to direct and utilize the resources of the Department in the most effective manner possible to ensure full enforcement of all federal laws. A decision to prosecute is made based on the law and the unique circumstances surrounding a case; therefore, I cannot offer an opinion that would fit every instance.

5. With respect to Questions for the Record 6 and 7 regarding Alabama’s use of the hitching post, you stated that the Complaint in *Hope v. Pelzer*, 536 U.S. 730 (2002) “was not filed until after [you] w[ere] elected to the Senate.” Other lawsuits were also pending while you were Alabama Attorney General. *See Austin v. Hopper*, 15 F. Supp. 2d 1210 (1998) (relevant claims filed in September 1995); *see also Fountain v. Talley*, 104 F. Supp. 2d 1345 (M.D. Ala. 2000) (filed in 1994). Question for the Record 6 specifically refers to two letters from the Department of Justice that were sent to you on March 27, 1995, about two months into your two years of service as Alabama Attorney General, informing you of the Justice Department’s findings that the use of the hitching post was “indefensible” and “violates constitutional standards” and that “[p]ractices of this sort cannot be justified no matter how many superficial safeguards exist.” These letters are available at <https://www.judiciary.senate.gov/download/hitching-post-report-tutwiler> and <https://www.judiciary.senate.gov/download/hitching-post-report-easterling>. What, if any, actions did you take to stop the use of the hitching post when you were serving as Alabama Attorney General?

RESPONSE: As I previously stated, the Supreme Court in *Hope v. Pelzer* prohibited the use of the hitching post only as applied in that case, due to the circumstances that case presented. The complaint in that case was not filed until after I was elected to the Senate, and the first filing by Alabama in that case was not until nearly two months after I had left the Alabama Attorney General’s Office.

6. Question for the Record 8 cites several recent or pending federal investigations and lawsuits related to the treatment of prisoners in Alabama prison facilities and inquires as to your efforts to ensure Alabama’s prison facilities comply with the Constitution. Your

response cites your 2003 introduction of the Prison Rape Elimination Act.

- a. As U.S. Attorney for the Southern District of Alabama and as Alabama Attorney General, what actions did you take to ensure that Alabama prison facilities complied with the Constitution?
- b. During your time in the Senate since 2003, what have you done to address the continued mistreatment of prisoners?

RESPONSE to (a) – (b): Throughout my career, I have worked to address challenges facing the justice system. My efforts include leading the bipartisan passage of the Prison Rape Elimination Act. If I am fortunate enough to be confirmed as Attorney General, I will continue to seek solutions to the challenges facing incarceration facilities.

7. With respect to Question for the Record 9(b), you stated that you “believe that fraudulent activities regularly occur during election cycles,” and that “[t]here is no reason to believe that this election is any exception.” You cited the 2005 report from the Carter-Baker Commission on Federal Election Reform. The report has been criticized as deeply flawed for its lack of transparent process, failure to consult with recognized experts, and minimal attempt to gather empirical data to support its conclusions.
 - a. Have you reviewed and considered criticisms of the Carter-Baker Commission report, such as those reported in the Brennan Center’s report (available at <https://www.brennancenter.org/press-release/voting-rights-groups-respond-carter-baker-commission-report-election-reform>)?
 - b. What empirical evidence do you have to support your belief that voter fraud “regularly occur[s]”?
 - c. Do you believe that millions of individuals voted illegally in the 2016 U.S. presidential election?

RESPONSE to (a) – (c): As I previously stated, I believe that fraudulent activities regularly occur during election cycles. There is no reason to believe that this election is any exception. I would also note that the views of the Brennan Center are not universally accepted.

8. Question for the Record 10 references a 2014 report in the *Washington Post* (available at https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.dc645a28fb6b) finding that since 2000, there were only 31 credible allegations of voter impersonation, during a period in which there were 1 billion ballots cast. You previously responded, “Please see responses to 9(b) and (c),” but these responses do not address whether the expenditure of Department of Justice resources to combat in-person voter fraud is justified in light of this study. In light of the 2014 report by Justin Levitt, do you think it is justifiable for the Department of Justice to spend resources on combatting in-person voter fraud?

RESPONSE: Whether an investigation or prosecution of a voter fraud case or any other case is justified is a decision based on the unique circumstances and evidence presented in each case.

9. In your response to Question for the Record 11, you stated that the “government cannot create laws designed to improperly inhibit the right of any eligible citizens to vote.”

Recently, the Fifth Circuit, in an en banc decision, affirmed that a Texas Statute “violates Section 2 of the Voting Rights Act through its discriminatory effects” on minorities. *Veasey v. Abbott*, 830 F.3d 216, 272 (5th Cir. 2016). The Department of Justice was recently granted a 30-day continuance to allow additional time to brief the new leadership of the Department of Justice on this case and the issues to be addressed. Do you believe that the Department of Justice should continue to vigorously litigate this case, where there has been a direct violation of the Voting Rights Act?

RESPONSE: As I have not yet been confirmed as Attorney General, I have not received the briefings referenced and do not have access to the internal information available to the Department. Accordingly, I cannot yet make a determination as to this specific case.

10. In Response to Question for the Record 14, you stated that “[n]o person or groups of persons should be interned without a clear legal basis.”
- a. Do you believe it would be possible to demonstrate a clear legal basis to intern U.S. citizens and/or residents?
 - b. If your answer is “yes,” please cite specific justifications and sources you would rely upon.

RESPONSE to (a) – (b): As I previously stated,

“I am unaware of any proposal for internment of American citizens or residents. The *Korematsu* lesson our nation learned in WWII from the unjustified internment of Japanese citizens and residents must never be forgotten. This was a national tragedy that cannot be allowed to happen again. No person or groups of persons should be interned without a clear legal basis.”

11. In response to Question for the Record 16, you stated that you “do not believe that a building or organization should be targeted for surveillance because it is a religious institution.”
- a. Do you believe that a religious institution should be targeted because it is of a particular faith, *i.e.*, should a religious institution be targeted because it is a Muslim institution?

RESPONSE: I believe that my original response answers this question.

- b. Will you commit to instructing the FBI that the agency should not surveil a house of worship unless there is probable cause of criminal activity?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will work to ensure that any Department of Justice surveillance of any institution or person, regardless of religion, is conducted in accordance with applicable law.

12. In your response to Question for the Record 18, you stated that “President Trump has stated that he will comply with his obligations under the Foreign Emoluments Clause, and in fact, that he will take additional steps beyond what may be required under the Constitution.” However, the plan President Trump outlined on January 11, 2017 (to address his potential conflicts and violation of the Emoluments Clause) did not require

President Trump to relinquish ownership of his business or to establish a blind trust. The plan also did not indicate that President Trump would seek the consent of Congress to keep the benefits he receives from foreign entities through his businesses. The Director of the Office of Government Ethics has stated that this plan breaks with the practice of past presidents.

- a. Based on these facts, has President Trump, in your view, complied with the requirements of the Emoluments Clause?
- b. On January 23, 2017, Citizens for Responsibility and Ethics in Washington, supported by a bipartisan group of past presidential ethics lawyers and constitutional law scholars, filed a complaint against President Trump for violating the Emoluments Clause (available at <http://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/01/23222937/Complaint-17-458.pdf>). Will you recuse yourself from this matter, given your personal involvement in President Trump's campaign in which he repeatedly stated his views about what he did and did not have to do to avoid conflicts of interest?

RESPONSE to (a) – (b): As I have previously stated, this question is not one on which I have devoted any study. Therefore, I am not in a position to offer even an informal opinion on it.

13. In response to Question for the Record 20 regarding the Office of Legal Counsel (OLC):
 - a. You agreed with prior Best Practices for OLC Legal Advice and Written Opinions (May 16, 2005 and July 16, 2010) that OLC should provide “candid, independent, and principled advice,” but you did not comment on the second portion of the quoted statement in Question 20(a), that OLC should provide such candid, independent, and principled advice “even when that advice may be inconsistent with the desires of policymakers” including the President. It is your view that OLC should provide “candid, independent and principled advice—even when that advice may be inconsistent with the desires of policymakers” including the President?

RESPONSE: The nature of “candid, independent and principled advice” is that it is candid, independent and principled, which by definition means it may be inconsistent with the desires of policymakers.

- b. You noted that an OLC opinion should be overturned “only after the most careful study and reflection,” but Question 20(b) asked what standard should be met before an Attorney General or OLC opinion is overturned. What do you contend is the appropriate legal standard?

RESPONSE: If a serious question arose as to the legitimacy of a particular OLC opinion, the Attorney General should review it to determine whether or not it contains a reasonable interpretation of the law. If, after careful study and reflection, the Attorney General found that it did not, it would be necessary to overturn it.

14. In response to Question for the Record 24 regarding the 14th Amendment's constitutional guarantee of birthright citizenship, you indicated that you “have not studied this issue in-depth” and would “enforce the law and the Constitution, and recognize that Congress may

determine whether to enact changes to the law.”

- a. Based on your review of the 14th Amendment, *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) and its progeny, and U.S. law, do you believe a constitutional amendment would be required for the U.S. to stop recognizing children born in the U.S. to undocumented immigrants as U.S. citizens?
- b. In an interview with Laura Ingraham in August 2015, you reportedly stated that it is “not an extreme position” to interpret the 14th Amendment such that a person born in the U.S. to parents who are undocumented is not entitled to U.S. citizenship at birth (available at <http://dailycaller.com/2015/08/19/jeff-sessions-backs-trump-on-birthright-citizenship-absolutely-not-an-extreme-position-video/>). Is that your position?

RESPONSE to (a) – (b): As I have previously stated, I am aware that scholars have differing views and have not conducted the careful research needed to express an opinion on the subject.

15. In response to Question for the Record 25 regarding Arizona’s SB 1070 and Alabama’s HB 56, you indicated that “[t]he constitutionality of state laws is evaluated on a case-by-case basis” and that you “would defer to the Supreme Court’s reasoning as to which portions of these laws were found to be constitutional.”
 - a. What is your understanding of the judicial rulings in *Arizona v. United States*, 132 S. Ct. 2492 (2012), *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012), and *United States v. Alabama*, 691 F.3d 1269 (11th Cir. 2012)?
 - b. Will you follow the law as set forth in these rulings?

RESPONSE to (a) – (b): These cases, and others like them, have been based on an analysis of when federal immigration law preempts state laws on immigration. If I am confirmed as Attorney General, it will be my duty to enforce federal immigration laws as written and as interpreted by the courts.

16. In response to Question for the Record 29 regarding Justice Department instructions to the Bureau of Alcohol, Tobacco, Firearms and Explosives, you noted that if confirmed, you “will support the continued enforcement of federal gun laws, as appropriate, and focus on criminal offenders.” What factors will you consider when determining whether it is appropriate to enforce federal gun laws?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will support the continued enforcement of federal gun laws based on careful evaluation of the pertinent facts and law in each case and the resources available to the Department. Effective enforcement of gun laws is a valuable tool in reducing violence in America and will be a priority.

17. In response to Question for the Record 30 regarding the Justice Department’s support for the Youth Mentoring Program, you indicated that you were “not familiar with the specifics of the funding associated with this particular program,” and, if confirmed, you would “make funding decisions only after a careful evaluation of any current practice or program administered by the Department and the effectiveness of those practices to aid in

the administration of justice.” What metrics will you use to evaluate Department of Justice programs, and what tools will you use to judge the effectiveness of these programs in aiding the administration of justice?

RESPONSE: The effectiveness of any program within the Department would be measured by the mission and stated objectives of that program, the success of the program in meeting those objectives, and the efficiency with which program resources were utilized.

18. In response to Question for the Record 31, you indicated that, if confirmed, “working with and supporting State and local law enforcement” to build trust and partnerships with the communities they serve will be a top priority, but you did not indicate how you will do so. This question referenced the recommendations of the President’s Task Force on 21st Century Policing, which are available at https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf. Please identify any recommendations you will support to build trust and partnerships between law enforcement and the communities they serve.

RESPONSE: State and local law enforcement agencies face unique challenges, just as they also face challenges similar to federal law enforcement. If I am fortunate enough to be confirmed as Attorney General, I will listen to the concerns and experiences of these agencies and will work with and support them in dealing with these challenges and building partnerships with the communities they serve.