February 6, 2019

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

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

Dear Chairman Graham and Ranking Member Feinstein:

On January 25, I submitted responses to Questions for the Record received from members of the Committee. Last week, I received additional "Questions for the Record" from Ranking Member Feinstein and Senator Leahy. Although it is my understanding that the time for submitting and responding to Questions for the Record has passed and that the record is now closed, I nevertheless am voluntarily providing additional information in an effort to be responsive to the Committee. Enclosed please find my responses.

Sincerely,

William P. Barr

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

FOLLOW-UP QUESTIONS FROM SENATOR FEINSTEIN

1. In the Questions for the Record, you were asked whether you had "discussed with anyone the use of executive privilege in connection with Special Counsel Mueller's report? If so, with whom, when, and what was discussed?" (Feinstein QFR 1(a)) You responded that you "*recall having general discussions about the possibility that any Special Counsel report may include categories of information that could be subject to certain privileges or confidentiality interests, including . . . information subject to executive privilege*." You also wrote: "*I do not recall any discussions regarding the use of executive privilege to prevent the public release of any such report*." (Barr Response to Feinstein QFR 1(a))

   You did not indicate with whom you had these general discussions; when those discussions or occurred; or what you discussed as requested.

   a. Please identify the individual or individuals with whom you had the discussions you referenced. Please state their names and titles/positions.

   b. Please identify the date(s) when they occurred.

   c. Please identify what was discussed.

   d. Did you discuss whether information from Mueller's report may not be provided to Congress or the public (based on privilege, confidentiality, or any other basis) with anyone? If so, what specifically was discussed, when, and with whom?

   e. You acknowledged in your response that you did discuss executive privilege, but said you could "not recall any discussions regarding the use of executive privilege to prevent the public release of any such report." What specifically did you discuss with respect to executive privilege?

   RESPONSE: As I stated in my response to your Question for the Record 1, I do not know what will be included in any report prepared by the Special Counsel, what form such a report will take, or whether it will contain confidential or privileged material. In my prior response, I was referring to general discussions that occurred following the announcement of my nomination, in the course of preparing for my hearing before the Committee. To the best of my recollection, I recall discussing the possibility that a Special Counsel report could include categories of information that could be subject to certain privileges or confidentiality interests, including classified information, grand jury information, and information subject to executive privilege. To the best of my recollection, I had those discussions with the individuals who were preparing me for my testimony before the Committee. I do not recall any

discussions regarding the use of executive privilege to prevent the public release of any such report or its release to Congress. If confirmed, I will follow the law, Department policy, and established practices, to the extent applicable, in determining whether any confidentiality interests or privileges may apply and how they should be evaluated and asserted. If it turns out that any report contains material information that is privileged or confidential, I would not tolerate an effort to withhold such information for any improper purpose, such as to cover up wrongdoing.

As I testified repeatedly during my hearing and reiterated in my responses to multiple Questions for the Record, 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 applicable regulations, 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.

2. In the Questions for the Record, you were asked for specific details regarding the drafting and dissemination of your June 2018 Mueller memo. (Feinstein QFR 5). You provided a general narrative that covered some of the requested details, but failed to disclose others.

    a. You responded that before you wrote the memo, you spoke with Deputy Attorney General Rosenstein "*at lunch in early 2018*" and with Assistant Attorney General Steven Engel "*later, on a separate occasion*." For each of these discussions, please explain the circumstances, including who initiated the meeting or discussion and what specifically was discussed.

    RESPONSE: As I explained in my January 14, 2019 letter to Chairman Graham, in my testimony during the hearing, and in my answers to multiple Questions for the Record, to the best of my recollection, before I began writing the memorandum, I provided my views on the issue discussed in the memorandum to Deputy Attorney General Rod Rosenstein at lunch. To the best of my recollection, I suggested that we have lunch together, and he invited me to the Department in late March 2018. After we discussed other unrelated topics, I explained my concerns. As I testified during my hearing, he did not respond. Later, on a separate occasion, I briefly provided my views on the issue discussed in the memorandum to Assistant Attorney General Steven Engel in May 2018, when I stopped by his office while at the Department on unrelated business. As I have previously explained, during my interactions with Department officials, I neither solicited nor received any information about the Special Counsel's investigation.

b. You also responded that, after you wrote the memo, you provided copies to lawyers for the President. Specifically, you say you sent a copy to Pat Cipollone and discussed the issues raised in your memo with "*him and a few other lawyers for the President, namely Marty and Jane Raskin and Jay Sekulow*."

   i. When did your conversations with Mr. Cipollone take place? If he was not yet serving as White House Counsel, were you aware that he was under consideration for that position? Please also explain who initiated these conversations, who else was present, and what specifically was discussed.

   ii. With regard to your discussions with Marty and Jane Raskin and Jay Sekulow, please similarly explain when these conversations took place, who initiated these conversations, who was present, and what specifically was discussed.

RESPONSE: As I explained in my January 14, 2019 letter to Chairman Graham, a copy of which was attached to my responses to the Committee's Questions for the Record, I sent a copy of my June 2018 memorandum to Pat Cipollone and have discussed the issues raised in the memo with him, Marty and Jane Raskin, and Jay Sekulow. To the best of my recollection, I explained my views to Mr. Cipollone and Mr. and Mrs. Raskin in May 2018, and at that time did not know whether or if Mr. Cipollone was under consideration to become the White House Counsel. After I sent Mr. Cipollone the memorandum, I explained my views to him, Mr. and Mrs. Raskin, and Mr. Sekulow in or around June 2018.

   iii. In your letter to Senator Graham (dated January 14, 2019 and referenced in your response), you list Abbe Lowell, who has been representing Jared Kushner in the ongoing Russia investigation, as someone to whom you gave your memo and discussed your views. Please explain when you gave Mr. Lowell the memo or discussed it with him, who initiated these contacts, who was present for these discussions, and what specifically was discussed. Was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed.

   iv. Your letter to Senator Graham also lists Richard Cullen, who has been representing Vice President Pence in the ongoing Russia investigation, as someone to whom you gave your memo and discussed your views. Please explain when you gave Mr. Cullen the memo or discussed it with him, who initiated these contacts, who was present for these conversations, and what specifically was discussed. Was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed

v. Have you shared a copy of or discussed your memo with any other individual who is currently or has represented clients in connection with the Mueller investigation? If so, with whom? Please also explain who initiated the meeting or discussion, and what specifically was discussed.

vi. Your letter to Senator Graham also lists Jonathan Turley, a law professor who testified at your hearing, and George Terwilliger, a former colleague of yours at the Justice Department, as individuals to whom you gave your memo and discussed your views. Did you discuss with either Professor Turley or Mr. Terwilliger whether they would testify regarding your memo, or defend you or the memo in another context such as a publication, or otherwise?

RESPONSE: As I explained in my January 14, 2019 letter to Chairman Graham, a copy of which was attached to my responses to the Committee's Questions for the Record, as a former Attorney General, I am naturally interested in significant legal issues of public import, and I frequently offer my views on legal issues of the day—sometimes in discussions directly with public officials; sometimes in published op-eds; sometimes in amicus briefs; and sometimes in Congressional testimony. For example, I have offered my views to officials at the Department on a number of legal issues, such as concerns about the prosecution of Senator Bob Menendez, who was represented by Abbe Lowell, a lawyer with whom I have been friends for many years.

In 2017 and 2018, much of the news media was saturated with commentary and speculation about various obstruction theories that the Special Counsel may have been pursuing at the time, including theories under 18 U.S.C. § 1512(c). I decided to weigh in because I was worried that if an overly expansive interpretation of section 1512(c) were adopted in this particular case, it could, over the longer term, cast a pall over the exercise of discretionary authority—not just by future Presidents, but by all public officials involved in administering the law, especially those in the Department. My purpose in doing so was to make sure that all of the lawyers involved carefully considered the potential implications of the theory. I discussed my views broadly with lawyer friends, wrote the memorandum to senior Department officials, shared it with other interested parties, and later provided copies of the memorandum to friends.

It was in that spirit that I provided the memorandum to the individuals identified in my January 14, 2019 letter to Chairman Graham. To the best of my recollection, I briefly mentioned the memorandum to Abbe Lowell and provided a copy at his request in or around August 2018. We had no follow-up discussions regarding the memorandum. To the best of my recollection, I mentioned my views to Richard Cullen, who is a longtime friend, in or around May 2018 and provided him a copy of the memorandum in or

around June 2018. Other than Mr. Cullen briefly acknowledging receipt and complimenting the memorandum, I do not recall a follow-up discussion regarding the memorandum. Further, as my letter to Chairman Graham explained, it is possible that I shared the memorandum or discussed my thinking reflected in the memorandum with other people in addition to those mentioned, including some who have represented clients in connection with the Special Counsel's work.

vii. Have you ever discussed your June 8, 2018 memo with Vice President Pence? If so, when, who initiated the conversation, and what specifically did you discuss? In any discussions with Vice President Pence, was any factual information regarding the Mueller investigation exchanged? If so, please explain what information was discussed.

RESPONSE: To the best of my recollection, I have not discussed the memorandum with Vice President Pence.

3. Previously, you were asked whether you would "specifically commit to timely responding to minority requests" and "not just requests from a Chair or members of the majority." (Feinstein QFR 16(a)) You responded in relevant part: "*I understand that the Department works to appropriately respond to all members of the Committee, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department's Office of Legislative Affairs*." (Barr Response to Feinstein QFR 16(a))

   As you may know, on June 7, 2017, then-Chairman Grassley wrote a letter to the President expressing his strong disagreement with conclusions in the OLC memo dated May 1, 2017. Then-Chairman Grassley stated that the OLC memo "falsely asserts that only requests from committees or their chairs are 'constitutionally authorized,' and relegates requests from non-Chairmen to the position of 'non-oversight' inquiries — whatever that means." (June 7, 2017 Letter from Chairman Grassley to President Trump) In response, former White House Director of Legislative Affairs Marc Short wrote that "the OLC Letter was not intended to provide, and did not purport to provide, a statement of Administration policy." Mr. Short also wrote that "[t]he Administration's policy is to respect the rights of all individual Members, regardless of party affiliation, to request information about Executive Branch policies and programs. The Administration will use its best efforts to be as timely and responsive as possible in answering such requests consistent with the need to prioritize requests from congressional Committees . . . ." (July 20, 2017 Letter from WH Director of Legislative Affairs Marc Short to Chairman Grassley)

   a. Do you agree with Mr. Short's statement that the May 1, 2017 OLC opinion is not a statement of Administration policy?

b. If confirmed, what specific policy will you follow with regard to requests from the minority?

c. Given the May 1, 2017 OLC opinion, and the White House letter of July 20, 2017, will you specifically commit to timely responding to minority requests, if you are confirmed, and not just to requests from a Chair or members of the majority?

RESPONSE: It is my understanding that the Department responds to legitimate requests for information from *all* Members of Congress. I understand how important it is to receive information from the Executive Branch. I agree with the June 20, 2017 letter to Senator Grassley from the White House Director of Legislative Affairs, which explains that the Administration will "use its best efforts to be as timely and responsive as possible in answering" requests from all Members, including minority Members, "consistent with the need to prioritize requests from congressional Committees, with applicable resource constraints, and with any legitimate confidentiality or other institutional interest of the Executive Branch." If confirmed, I commit that the Department will follow this Administration policy while continuing to protect its law enforcement, litigation, and national security obligations and legal requirements.

4. Previously you were asked whether you had "spoken with anyone about possible recusal from the Special Counsel's investigation? If so, with whom, when, and what was discussed?" (Feinstein QFR 20) You responded that you "*discussed with officials in the Department of Justice whether the memorandum that I drafted in June 2018 would require recusal or present a conflict of interest*." (Barr Response to Feinstein QFR 20) But you did not identify the specific individuals or what was discussed, including whether you were provided with any advice regarding your potential recusal from the Mueller investigation.

   a. Please identify the individual or individuals within the Justice Department with whom you had these discussions. Please state their names and titles/positions.

   b. Please identify the date(s) when you had these discussions.

   c. Please identify what was discussed with respect to possible recusal from the Mueller investigation, including whether anyone provided any advice about your possible recusal from this investigation.

RESPONSE: As I explained in my answer to your Question for the Record 20, after the President announced on December 7, 2018, that he intended to nominate me to serve as Attorney General, I discussed with officials in the Department of Justice whether the memorandum that I drafted in June 2018 would require recusal or present a conflict of interest. As was publicly reported on December 19, 2018, senior Department ethics officials conveyed their view that my memorandum would not pose a conflict of interest. I was also told that any recusal decision could not be

made until after I assumed office and all relevant facts and circumstances were known.

5. In Questions for the Record, you were asked whether "you still believe that *Roe v. Wade* should be overruled." (Feinstein QFR 29(a)) You responded that *Roe* "*is precedent of the Supreme Court and has been reaffirmed many times*," adding: "*I understand that the Department [of Justice] has stopped, as a routine matter, asking that Roe be overruled*." (Barr Response to Feinstein QFR 29(a))

    a. Please clarify whether <u>you</u> believe that *Roe v. Wade* should be overruled. If so, on what basis?

    b. Please clarify whether, if confirmed, you will seek to ask for *Roe* to be overruled.

    RESPONSE: As I explained in my answers to the Committee's Questions for the Record, in the Reagan and George H.W. Bush Administrations, the Solicitor General routinely asked the Supreme Court to overrule *Roe v. Wade*. But at that time, *Roe* was less than 20 years old.

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

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

6. In Questions for the Record, you were asked: "*In your view, what are the options for holding a president accountable for abuse of the pardon authority?*" (Feinstein QFR 12(e)) You did not respond to this question. Please clarify, in your view, what are the options for holding a president accountable for abuse of the pardon authority?

    RESPONSE: As I explained in my answers to the Committee's Questions for the Record, under the Constitution, the President's power to pardon is broad. However, like any other power, the power to pardon is subject to abuse. 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. In addition, a president who abuses his or her pardon power can be held accountable in a number of different ways by Congress and the electorate.

7. You were previously asked a question about enforcement of the Americans with Disability Act (ADA): "If confirmed, what specific steps will you take to ensure that the

ADA is vigorously enforced?" (Feinstein QFR 54) You responded: "*If confirmed, I will enforce all federal civil rights law enacted by Congress, including the ADA*." (Barr Response to Feinstein QFR 54) Please identify the specific steps you will take, if confirmed, to enforce the ADA. Please provide details about enforcement under both Titles II and III.

RESPONSE: If confirmed, I look forward to meeting with the senior leadership of the Civil Rights Division and discussing with them the Department's current implementation of Titles II and III of the ADA as well as steps that could be taken to improve the Department's implementation, to the extent that such steps exist. As Attorney General, my focus would be on ensuring that the ADA, as well as all federal civil rights laws, are enforced vigorously throughout this country.

FOLLOW-UP QUESTIONS FROM SENATOR LEAHY

1. I appreciate that you acknowledged in your testimony that it is "very important that the public and Congress be informed of the results of the Special Counsel's work." But I am concerned that, based on some of your other responses to senators, you may believe you are restricted from informing the public or Congress of any potential wrongdoing committed by the President provided the Special Counsel does not recommend he be indicted, consistent with current Department policy governing sitting presidents. In response to Senator Durbin's questions for the record you cited Department of Justice guidance that the required report under 28 C.F.R. § 600.8 is "handled as a confidential document, as are internal documents relating to any federal criminal investigation." You also cite to the Justice Manual, § 9-27.760, which "cautions prosecutors to be sensitive to the privacy and reputational interests of uncharged third parties."

    a. As it is current Department policy that a President may not be indicted while in office, do you interpret the Department's regulations and guidance to require that a report that details misconduct by a President currently in office cannot be released to Congress or the public because the President would be an uncharged third party?

    RESPONSE: As I explained in my answers to the Committee's Questions for the Record, 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 applicable regulations, 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.

2. In addition to being a criminal investigation, the investigation led by Special Counsel Mueller consists of a counter-intelligence investigation into foreign interference in the 2016 election. It is not clear that the special counsel regulations contemplated the potential of a counter-intelligence investigation, which would not typically lead to "prosecution or declination decisions" under 28 C.F.R. § 600.8.

    a. What standard would you apply in deciding whether to release to Congress findings from a counter-intelligence investigation conducted by the Special Counsel?

RESPONSE: Please see my response to Question 1(a) above, as well as my responses to questions about disclosing the Special Counsel's findings in the Committee's Questions for the Record.

3. The special counsel regulations require that a report be transmitted confidentially to the Attorney General upon the conclusion of an investigation. But the regulations do not state that the Attorney General lacks the discretion to make such report public if it is in the public interest and with required redactions, if any.

    a. Do you agree that an Attorney General retains the discretion to transmit the Special Counsel's report to Congress or make it public with appropriate redactions if it is in the public interest?

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).

Please also see my answer to Question 1(a) above.

4. During your confirmation hearing, when I asked whether you would commit to both seek and follow the advice of career ethics officials regarding potential recusal from the Special Counsel investigation, you testified that "under the regulations, I make the decision as the head of the agency as to my own recusal." You later elaborated that you would not follow the ethics officials' recommendation should you disagree with their advice. Like all agency heads, however, the Attorney General is obligated to follow the established ethics protocols as laid out in the Standards of Ethical Conduct for Employees of the Executive Branch to avoid the appearance of loss of impartiality.

    a. Given your previous public comments on the Special Counsel's investigation—including your comment that you saw more basis for investigating the Uranium One deal than "so-called collusion," and your memo sent to both the Justice

Department and President's lawyers—if you received a recommendation from career, nonpartisan ethics officials that you need to recuse from the Special Counsel's investigation, wouldn't the refusal to accept that recommendation not give further rise to an appearance of a conflict?

RESPONSE: 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."). As I explained in my responses to the Committee's Questions for the Record, 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 and based on the facts and applicable law and rules.