

**QUESTIONS FOR THE RECORD
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NOMINEE TO BE DEPUTY ATTORNEY GENERAL**

QUESTIONS FROM SENATOR DURBIN

1. Acting Attorney General Sally Yates said the Justice Department could not defend the President’s original travel ban because she was not convinced it was lawful. She was promptly fired by the President.

To explain this unprecedented action, the White House issued a statement claiming: “Ms. Yates is an Obama Administration appointee who is weak on borders and very weak on illegal immigration.” The reality is that Sally Yates served for nearly three decades as a career federal prosecutor before becoming U.S. Attorney and then Deputy Attorney General. She was confirmed on an 84-12 vote. And it was President Trump who asked her to serve as Acting Attorney General.

You served with Sally Yates when she was U.S. Attorney and Deputy Attorney General. **Do you think she is “weak on borders and very weak on illegal immigration”?**

RESPONSE: I have no independent knowledge about the positions Ms. Yates took on borders and illegal immigration, and I am not in a position to comment on a subjective characterization of her views.

2. At her confirmation hearing, then-Senator Sessions asked Ms. Yates: “Do you think the Attorney General has the responsibility to say no to the President if he asks for something that’s improper? If the views that the President wants to execute are unlawful, should the Attorney General or the Deputy Attorney General say no?” She responded: “The Attorney General or the Deputy Attorney General has an obligation to follow the law and the Constitution and to give their independent legal advice to the President.”

- a. **Do you agree with Ms. Yates’ response?**

RESPONSE: Yes.

- b. **What will you do if the President or the Attorney General asks you to do something that you believe is illegal?**

RESPONSE: I would seek to consult with the President or the Attorney General to explain my opinion and determine whether there was a good-faith basis for any contrary opinion. I would not do something that I believe is illegal.

- c. **What will you do if the President or the Attorney General asks you to defend a statement or tweet that you believe is false?**

RESPONSE: In general, I would need to determine what the President or Attorney General wanted me to do about the statement or tweet and familiarize myself with any relevant facts and law, before making a decision on how to proceed.

3. On January 6, the Intelligence Community issued its assessment titled “Assessing Russian Activities and Intentions in Recent U.S. Elections.”

a. **Have you now read either the classified or unclassified version of the assessment?**

RESPONSE: Yes. I have read the unclassified version.

b. **Do you accept the “Key Judgments” presented in the assessment?**

RESPONSE: Having read the entire unclassified report, including the caveats in Annex B, I have no reason to doubt the assessment of our intelligence community.

c. **Do you accept the Intelligence Community’s judgment that Russia interfered with our election?**

RESPONSE: See response to 3(b).

d. **Do you know if Attorney General Sessions has read the assessment yet?**

RESPONSE: I do not know.

4.

a. **In your opinion, has President Trump divested himself of his ownership interests in the Trump Organization?**

RESPONSE: I do not know. If the issue were relevant to a matter presented to me for a decision, I would evaluate the facts and law, and consult with career professionals in the Department before reaching an opinion.

b. **If you lack sufficient information to form an opinion on this matter, please describe what information you would need to review in order to form an opinion.**

RESPONSE: I understand that it is the role of the Counsel to the President and personal attorneys, not the Department of Justice, to advise the President regarding his personal financial interests. If and when a matter arises that falls within the purview of the Department of Justice, I would make every effort to ensure that it is handled appropriately based on the law and the evidence presented.

5.

- a. **Do you know how much of the Trump Organization’s assets or debts are held or owned by Russian individuals, businesses, or government officials?**

RESPONSE: No.

- b. **If you lack sufficient information to answer this question, please describe what information you would need to review in order to provide an answer.**

RESPONSE: See response to 4(b).

6. **Do you believe the American people would benefit from full transparency of the Trump Organization’s assets, debts, and foreign entanglements, in order to ensure there are no Russian entanglements or unconstitutional emoluments?**

RESPONSE: I understand that federal law requires the President to release a financial disclosure form that is publicly available.

7. Senator Leahy sent Attorney General Sessions the following written question for the record during his confirmation process: “Have you been in contact with anyone connected to any part of the Russian government about the 2016 election, either before or after election day?” Attorney General Sessions’ answer was one word: “No.”

But on the March 2 “Tucker Carlson Tonight” show, he answered differently. When asked if he had spoken with the Russian Ambassador about the campaign during their September 8 meeting, the Attorney General said “I do not recall any discussion of the campaign in any significant way.”

If Attorney General Sessions spoke with the Russian Ambassador about the campaign in any way, whether significant or insignificant, during the September 2016 meeting, do you believe his answer to Senator Leahy’s question was accurate?

RESPONSE: I have no independent basis of knowledge about this issue and therefore I am not in a position to comment.

8. On March 2, Attorney General Sessions issued a public statement saying, “I have decided to recuse myself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.” In his March 6 letter to the Committee, Attorney General Sessions acknowledged the Committee’s concerns as to “why [he] had not recused [himself] from ‘Russian contacts with the Trump transition team and administration.’” He then wrote, “I understand the scope of the recusal described in the Department’s press release

would include any such matters.”

At your hearing I asked you to clarify your understanding of the scope of the Attorney General’s recusal based on his plain language. **Do you agree with Attorney General Sessions that he has recused himself from any existing or future investigations of any matters related in any way to Russian contacts with the Trump campaign, transition team and administration?**

RESPONSE: Based on public sources, I understand that the Attorney General is recused “from any existing or future investigations of any matters related in any way to the campaigns for President of the United States,” and any matters involving “Russian contacts with the Trump transition team and administration.”

9. Have you communicated with anyone in the White House or Justice Department regarding Attorney General Sessions’ recusal decision? If so, please identify the individuals with whom you communicated and what was discussed.

RESPONSE: I have not communicated with anyone in the White House or the Justice Department regarding the Attorney General’s decision to recuse. I communicate about public information relating to my pending nomination with Justice Department colleagues, including employees who accompanied me during visits to your offices. I recommended to the Attorney General’s chief of staff that it would be prudent to exclude members of an Attorney General’s staff from involvement in any matters from which an Attorney General is recused, and the chief of staff told me that he already had done so.

10. If you are confirmed, do you agree that the decision would fall to you whether or not to appoint a special counsel to investigate Russian efforts to interfere with the 2016 presidential election?

RESPONSE: In circumstances where the Attorney General is recused, the Acting Attorney General has authority to appoint a special counsel.

11. If you decide not to appoint a special counsel, will you commit to publicly explain to the American people the grounds for not making this appointment?

RESPONSE: I do not know the facts or the status of any investigation, and I have not consulted with agents and prosecutors and intelligence community professionals who may have relevant information. I know from my personal experience handling investigations that involve classified information that when the intelligence community discloses information to the Department of Justice, it does so with the understanding and on the condition that any decision to disclose classified information is retained by the intelligence community. At this time, without having fully reviewed this matter, I am not in a position to comment further or commit to a future course of action.

12. Some say that the way to reduce gun violence is simply to bring more federal prosecutions

against those who carry guns during the commission of crimes. While federal prosecutions of gun crimes may be important tools, they clearly are not enough on their own to solve the public health crisis of gun violence. For example, *The Chicago-Sun Times* reported that Baltimore had significantly more federal gun prosecutions than Chicago over the past five years (810 to 477), but Baltimore's per-capita homicide rate is still higher than Chicago's.

- a. Do you agree that simply bringing more federal gun prosecutions isn't enough to stop gun violence?**

RESPONSE: Gun prosecutions are one tool that law enforcement agencies can use to stop gun violence. Successful prosecutions generally stop gun violence perpetrated by or against the defendant while he or she is in prison, and may deter gun violence by others. There are many other things that can be done by the Department and other agencies to deter crime.

- b. Do you agree that an effective strategy to reduce gun violence would benefit from Justice Department investments in violence prevention efforts like the COPS program, the programs administered under the Second Chance Act, and the programs administered by the Office of Juvenile Justice and Delinquency Prevention?**

RESPONSE: An effective strategy to reduce gun violence would benefit from many initiatives. If I am confirmed, I hope to work with the Congress and Justice Department colleagues to make the best use of all available tools.

- c. Will you commit not to request cuts in Justice Department budget requests to violence prevention programs that are vitally important to Chicago including programs administered by the COPS Office, the Office of Juvenile Justice and Delinquency Prevention and the Office of Violence Against Women?**

RESPONSE: I met with Chicago Police Superintendent Eddie Johnson on March 17, 2017. If I am confirmed as Deputy Attorney General, I will work with the Attorney General and other officials to address Chicago's crime problem. Because resources are limited, I cannot commit to provide a particular amount of funding to a single jurisdiction without knowing how circumstances or priorities might change in the future.

13. When we met prior to your hearing, we discussed the Fair Sentencing Act, legislation that I authored with then-Senator Sessions that reduced the 100-to-1 sentencing disparity between crack and powder cocaine. The bipartisan Sentencing Commission unanimously decided to retroactively apply changes in the crack cocaine sentencing guidelines that resulted from the Fair Sentencing Act. This led to the early release of approximately 13,000 crack offenders who were serving draconian sentences under pre-Fair Sentencing Act guidelines; 80 percent of these offenders are African-American.

- a. I want to make sure that I am clear on your position, so, for the record, did you support the Durbin-Sessions Fair Sentencing Act?**

RESPONSE: I do not recall taking a position on that act before it was passed. After the law was passed, I faithfully implemented it.

b. Did you support the retroactive sentencing guidelines?

RESPONSE: Consistent with Justice Department policies, my office supported retroactive sentence reductions when appropriate.

14. If you are confirmed, you will become the chair of a Task Force on Crime Reduction and Public Safety that the President established by executive order. The task force is charged with developing strategies to reduce crime and improve public safety.

One issue you will need to address is the federal prison budget crisis. Our federal prison population has grown by 750% since 1980, and our federal prisons are about 30% over capacity. Federal prisons now consume one quarter of the Justice Department's discretionary budget. These runaway expenditures are undermining other important priorities, like funding for crime prevention, drug courts, and addiction treatment.

The largest increase in the federal prison population is nonviolent drug offenders, and this problem has been made worse by inflexible mandatory minimum sentences.

a. What is your plan to address BOP's budget?

RESPONSE: The reported federal prison population as of March 16, 2017, is 189,041, which is approximately 767% of the population reported in 1980 (24,640), representing a 667% increase. I will work with BOP, the Congress and other officials to address BOP's budget.

b. Should a part of this plan involve giving judges more flexibility to sentence nonviolent drug offenders below the mandatory minimum on a case-by-case basis?

RESPONSE: Judges have flexibility to impose sentences below the mandatory minimum on drug offenders under some circumstances. I would welcome the opportunity to review whether that flexibility is exercised appropriately and to discuss potential solutions if it is not.

c. If confirmed, will you direct federal prosecutors to utilize the Department's limited resources to focus prosecutions on the most dangerous violent offenders, rather than low-level non-violent drug offenders?

RESPONSE: I believe that the Department generally should focus on the most dangerous violent offenders. Consistent with the Principles of Federal Prosecution,

prosecutors should make prosecution decisions in individual cases after analyzing all pertinent facts and policies.

15. When you served as an attorney in the Justice Department's Public Integrity Section, you prosecuted two African-American men in a case involving allegations of absentee ballot fraud in Phillips County, Arkansas. The defendants in the case argued that they had been selectively prosecuted.

At trial, the defendants were acquitted of all but one charge, and they appealed their convictions for conspiracy to commit acts of multiple voting and conspiracy to provide false information in voting. The convictions were ultimately affirmed by the Eighth Circuit on a 2-1 vote.

However, in its opinion, the court discussed a number of "serious and pervasive" voting irregularities that prosecutors did not target in the area where Phillips County is located, including:

[R]ejection of black absentee ballots by white clerks... challenge of black absentee ballots because the ballots had been sent to the same address, while white absentee ballots sent to the same address were not questioned... casting of absentee ballots by non-resident whites or by parents for grown children... allowing white candidates to stay in [a] polling place while black candidates were asked to leave... and harassment and intimidation of black voters, including armed intimidation.

The Eighth Circuit remanded for resentencing and held that the district court had discretion to depart from the Sentencing Guidelines. They also noted that the district court may "consider the government's conduct in a decision to grant a downward departure."

The dissenting judge in the case noted that there was little difference between the actions of the defendants and the actions of white individuals, who were not prosecuted. Specifically, the judge noted that "the Department of Justice... failed to prosecute white political rivals who violated the same section of the Voting Rights Act in the same county and in the same election."

Why did the Justice Department choose to prosecute the black defendants in this case, but not white individuals who allegedly committed similar acts of voter fraud?

RESPONSE: We conducted the investigation and prosecution in compliance with the Constitution, the law and Justice Department policies, with supervision by and approval of career officials with expertise in election fraud prosecutions. The investigation determined that the defendants had committed large-scale theft of absentee ballots by stealing ballots, forging voter signatures, and voting the ballots without the knowledge of the voters, in an effort to alter the outcome of a local election. Many victims testified at the trial that they

did not vote the ballots submitted in their names. On the eve of trial, the defense filed allegations about isolated incidents of different types of election-related misconduct, largely anecdotal and unverified; there was never any allegation that the agents and prosecutors who worked on the case were aware of the other allegations. The Court of Appeals ruled that the defense “presented no evidence that other[] acts of absentee ballot forgery or fraud were tolerated without prosecution.”

16. As we discussed in our meeting, if you are confirmed, you will oversee the federal Bureau of Prisons (BOP) and be responsible for ensuring that almost 200,000 federal inmates are treated in a humane fashion.

When I was Chairman of the Subcommittee on the Constitution, Civil Rights, and Human Rights, I held two hearings on the human rights, fiscal, and public safety consequences of solitary confinement. Anyone who heard the chilling testimony of Anthony Graves and Damon Thibodeaux—exonerated inmates who each spent more than a decade in solitary confinement—knows that this is a critical human rights issue that we must address.

In light of the mounting evidence of the harmful—even dangerous—impacts of solitary confinement, states around the country have led the way in reassessing the practice. Progress has been made at the federal level as well. Last year, the Justice Department issued a report on the use of restricted housing in the federal prison system, and BOP has begun to implement a number of the report’s recommendations for reform. However, there are still approximately 10,000 federal inmates in segregation.

- a. **Do you believe that long-term solitary confinement can have a dangerous impact on inmates?**

RESPONSE: Prison officials must be able to secure offenders and prevent them from disrupting operations and harming correctional employees and other inmates. If confirmed, I will work closely with BOP about how best to handle dangerous prisoners.

- b. **Will you commit that, if you are confirmed, you will examine the evidence and work with BOP to make further improvements in the area of restricted housing?**

RESPONSE: If I am confirmed, I will work with BOP and others in the Department to ensure that inmates are held in appropriate housing conditions.

17. Deputy Attorney General Sally Yates issued a memo in August 2016 to begin the process of phasing out BOP’s use of private prisons. In the memo, she cited an August 2016 DOJ Inspector General (IG) report that found that private contract facilities used by BOP do not maintain the same level of safety and security as BOP-run facilities (<https://oig.justice.gov/reports/2016/e1606.pdf>). Specifically, the IG

noted that private facilities “had more frequent incidents per capita of contraband finds, assaults, uses of force, lockdowns, guilty findings on inmate discipline charges, and selected categories of grievances.” The IG also found that some of the facilities improperly housed new inmates in solitary confinement. Despite this evidence, the Attorney General recently issued a memo that directed BOP to “return to its previous approach.”

a. Do you accept the IG’s findings?

RESPONSE: I have no independent basis of knowledge about the Inspector General’s findings and am not in a position to comment. I am committed to ensuring that all BOP facilities are safe, secure, and humane.

b. Do you believe that there is a need for private prisons in the federal prison system?

RESPONSE: It is my understanding that the goal is to maintain the Bureau of Prisons’ flexibility to manage the federal inmate population based upon capacity needs, consistent with the need to ensure safety, security, and effective reentry programming. Whether private or public, detention facilities should be humane, secure, and safe for prisoners and staff.

c. If confirmed, what steps will you take to ensure that these problematic facilities operate in a manner that ensures the safety and security of all inmates and staff?

RESPONSE: I am committed to ensuring that all BOP facilities are safe, secure, and humane. I will decide upon specific steps after a careful analysis of the issues.

18. If confirmed, you will oversee the immigration courts, which face a nationwide backlog of more than 540,000 cases. Addressing this backlog in a manner that protects the rights of individuals seeking relief, including vulnerable women and children fleeing brutal persecution, will be a major challenge.

a. Will you commit to seeking to maintain or increase the number of immigration judges and courts nationwide?

REPOSE: If I am confirmed as Deputy Attorney General, I will study this issue and look for solutions to remedy the backlog, including considering whether the number of immigration judges and courts should be increased.

b. Will you commit to not removing any currently serving immigration judges or BIA members, except for cause?

RESPONSE: I will comply with the law and applicable regulations if presented with the issue of removing immigration judges or BIA members.

19. DHS Secretary Kelly's February 20 Memo implementing the President's Border Security Executive Order states:

In some immigration courts, aliens who are not detained will not have their cases heard by an immigration judge for as long as five years. This unacceptable delay affords removable aliens with no plausible claim for relief to remain unlawfully in the United States for many years.

The DHS implementation memo suggests that the solution to the backlog in the immigration courts is to greatly expand the use of expedited removal.

Troubling due process concerns have been raised about expedited removal procedures, including incidents of erroneous deportations and inadequate protection of vulnerable individuals seeking asylum.

- a. Are you aware that there have been cases of U.S. citizens with mental disabilities who have been wrongfully deported using expedited removal? See, for example, <https://www.aclu.org/report/american-exile-rapid-deportations-bypass-courtroom>.**

RESPONSE: I have not read the report you identify. There are due process questions involved with all adjudications, whether administrative or judicial.

- b. Do you believe that expanding expedited removal, which provides no judicial review prior to an individual's rapid deportation, is a just solution to the immigration court backlog? Or is increasing the number of immigration judges a more appropriate response to the immigration court backlog?**

RESPONSE: I have not had the opportunity to review the reasons for the immigration court backlog, or what solutions are most meritorious.

20. One study found that between Fiscal Year 2012 and Fiscal Year 2014, unaccompanied children represented by lawyers had a 73 percent success rate in immigration court, allowing them to stay in the U.S, while only 15 percent of unrepresented children succeeded in their cases and the rest were ordered deported (<http://trac.syr.edu/immigration/reports/371/>).

Legal representation also dramatically boosts appearance rates for court proceedings. An analysis found that over more than a decade, more than 95 percent of children represented by lawyers appeared for their immigration court proceedings, whereas for children without counsel the appearance rate was 33 percent (<https://www.americanimmigrationcouncil.org/research/children-immigration-court-over-95-percent-represented-attorney-appear-court>).

a. Do you believe that a child can represent herself fairly in immigration court?

RESPONSE: I understand that U.S. immigration laws provide all aliens with the privilege of being represented by the counsel of their choosing in civil immigration proceedings. I am also advised that Congress has specified that any such representation must occur at no expense to the government, with the exception codified in section 1232(a)(5)(C) of Title 8, which is directed to the Department of Health and Human Services.

b. If you are confirmed, do you plan to support programs to increase access to counsel in the immigration courts?

RESPONSE: It would be my role to faithfully enforce immigration laws, including any programs to increase access to counsel in the immigration courts.

- 21.** When we met prior to your confirmation hearing, I asked you about federal funding for so-called sanctuary cities. In response, you referenced a 2016 Office of Inspector General (OIG) Report and suggested that certain jurisdictions have not complied with federal law, specifically 8 U.S.C. Section 1373.

The goal of policies limiting local police departments' role in enforcing immigration laws is to promote effective community policing by encouraging immigrant communities to trust local police. Threatening communities across the country with the loss of millions of dollars in critical funding will diminish, not enhance, public safety. It also ignores the reality that the vast majority of immigrants in our country are law-abiding individuals with strong family values and deep roots in their communities.

Section 1373 bars the restriction of information sharing by government entities and officials with federal immigration authorities regarding an individual's citizenship and immigration status. It does not prohibit jurisdictions from limiting their police department's role in enforcing immigration laws by, for example, refusing to detain immigrants on behalf of the federal government or refusing to notify the federal government before releasing immigrants from their custody.

Although it raises questions about the language of specific ordinances, the OIG report you mentioned does not conclude that any jurisdiction receiving federal funds is in violation of federal law.

a. Do you agree that the OIG report does not conclude that specific jurisdictions have failed to comply with federal law?

RESPONSE: I have not studied the Inspector General's report. It is my understanding that the Inspector General reviewed ten state and local jurisdictions receiving OJP grant money and found inconsistencies in those jurisdictions' compliance with 8 U.S.C. § 1373. Department

officials would need to make an independent determination of non-compliance before taking any action.

- b. Do you agree that under current law the Administration cannot bar federal funding for jurisdictions that refuse to detain immigrants on behalf of the federal government or refuse to notify the federal government before releasing immigrants from their custody?**

RESPONSE: The President’s Executive Order directs the Department to take “appropriate enforcement action against any entity that violates 8 U.S.C. § 1373.” If confirmed as Deputy Attorney General, I will consult with career officials and ensure that implementation of the executive order is done in accordance with the law, and if appropriate, decided by a judge.

22. On February 23, Chairman Grassley sent a letter to Attorney General Sessions asking him to supply to the Committee records of all communications involving Acting Attorney General Sally Yates from January 20 through January 31. Specifically, the letter requested that the Attorney General provide “All emails to, from, copying, or blind-copying Ms. Yates...from both her classified and unclassified accounts” “[r]ecords of all calls Ms. Yates had,” “[r]ecords of all meetings Ms. Yates had,” and “[r]ecords of all correspondence Ms. Yates sent” from January 20 through January 31.

- a. In your view, is it appropriate for the Department of Justice to supply the Committee with all of the information requested in the February 23 letter?**

RESPONSE: I am not familiar with the request or the reasons for granting or denying it.

- b. If there is information that the Chairman requested in his February 23 letter that you believe to be inappropriate for the Justice Department to supply to the Committee, please describe such information and the reason why supplying it would be inappropriate.**

RESPONSE: See response to 22(a).

- c. Will you commit, if you are confirmed, to supply the Committee with all information requested by the Committee regarding your own emails and records of your calls, meetings, and correspondence?**

RESPONSE: I support appropriate oversight by the Congress and understand that my emails and records may be subject to disclosure when relevant to a legitimate oversight request. There may be legitimate reasons to withhold particular categories of documents, and there may be prudential reasons for the Congress to refrain from allowing congressional aides to review all emails and records of executive branch officials, even when the Congress has the authority to do so.

23. Have you communicated with anyone in the White House or Justice Department regarding the decision to ask for the resignation of 46 U.S. Attorneys on March 10, 2017? If so, please identify the individuals with whom you communicated and what was discussed.

RESPONSE: I did not communicate with anyone in the White House or Justice Department regarding the decision to ask for the resignation of 46 U.S. Attorneys on March 10, 2017. I learned about the decision on the afternoon of March 10, 2017, when I understand it was being implemented.

24. Do you believe Zach Fardon, the U.S. Attorney for the Northern District of Illinois who was asked on March 10 to resign, served the U.S. Attorney's Office and the people of Illinois well during his tenure as U.S. Attorney?

RESPONSE: Yes. I respect the authority of every President to choose the political appointees who serve in the President's Administration.