

Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Vanita Gupta
Nominee to be United States Associate Attorney General
March 12, 2021

1. During your hearing, you mentioned that for too long, we've placed many of our nation's social problems at the feet of police — everything from homelessness to mental health issues to substance use disorders.

Can you elaborate on what you've learned in your conversations with law enforcement over the years about the difficult challenges that we often ask the police to deal with?

RESPONSE: Throughout my career, I have worked closely and collaboratively with law enforcement and I have been fortunate to have had numerous conversations over many years with police chiefs and officers, sheriffs, and law enforcement groups. I have heard repeatedly from law enforcement that for too long we have placed too many social problems—including mental health challenges, substance use disorder, and homelessness—at the feet of police, and unfairly expected law enforcement to be the solution to these broader societal challenges. It is not fair to law enforcement. It places their safety at risk, and it detracts from their important mission to keep our communities safe from crime.

2. You stated during your hearing that, over your career, you have often advocated for greater resources for law enforcement, including for officer wellness programs and officer safety programs.

Why have you felt that it was important to increase funding for officer wellness and officer safety programs?

RESPONSE: Law enforcement officers risk their lives to keep our communities safe and they routinely suffer trauma. We must acknowledge the dangers faced by law enforcement and provide resources to ensure their safety and wellness on and off the job. Providing these resources to law enforcement not only improves their well-being, but also the well-being of the communities they serve.

3. During your previous tenure at the Justice Department, part of your job was to enforce the Servicemembers Civil Relief Act (SCRA). You helped oversee cases in which servicemembers and their families had been unlawfully evicted from their homes — and cases in which servicemembers had their cars repossessed unlawfully.

As Associate Attorney General, will you make it a priority to ensure that members of our military are not subject to predatory financial practices while they are defending our nation?

RESPONSE: Yes. If confirmed as Associate Attorney General, I would support the Civil Rights Division in its vital work enforcing the Servicemembers Civil Relief Act and other

federal laws that protect servicemembers, veterans, and their families. In particular, I would work to ensure that the Servicemembers and Veterans Initiative, permanently established within the Civil Rights Division by the Servicemembers and Veterans Initiative Act of 2020, has the resources it needs to combat predatory financial practices and fraudulent schemes targeting servicemembers. I would also look for opportunities where appropriate to expand the Department's coordination with other federal agencies that have a critical role to play in protecting servicemembers from predatory financial practices.

4. You have a long track record of working with conservatives on issues like criminal justice reform. As a result, you have a lengthy list of conservatives who have endorsed your nomination, including Grover Norquist, Michael Chertoff, Mark Holden, Michael Steele, Trey Grayson, and Holly Harris, among many others.

If confirmed, do you intend to continue engaging with elected officials and advocates of all ideological backgrounds?

RESPONSE: Yes. If I am confirmed as Associate Attorney General, I would welcome the opportunity to work with Democratic and Republican members of Congress, as well as state and local elected officials, and to hear from a diverse coalition of stakeholders across the ideological spectrum. I have a long and demonstrated record of bipartisanship and a history of building coalitions and bringing conservative and liberal voices to the table. At the Civil Rights Division, I worked closely with law enforcement and communities to address police misconduct and build trust. At the Leadership Conference, I also worked across the political spectrum—including with bipartisan members of this Committee—to help pass the First Step Act and to support additional legislation. I believe that my decades-long commitment to bipartisanship is why my nomination has been supported by every major law enforcement organization and by Republican leaders like Mark Holden, Grover Norquist, Trey Grayson, and Michael Chertoff, among others.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Ms. Vanita Gupta
Nominee to be Associate Attorney General of the United States

1. You applauded Walmart for prohibiting the sale of handguns in its stores.
 - a. Do you believe that all major retailers should do the same? Why or why not?
 - b. Would you support pharmacies prohibiting the sale of emergency contraception? Why or why not?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

2. In your hearing you described viewpoint discrimination as “anathema.”
 - a. Is it wrong for a retailer to refuse to sell a book relating to a public controversy because it disagrees with the viewpoint the book espouses?
 - b. What if the retailer has 50% market share?
 - c. What if the retailer has more than 75% market share?

RESPONSE: Strong enforcement of our nation’s antitrust laws is critical, consistent with First Amendment principles to preserve our marketplace of ideas. If confirmed, I will be committed to promoting strong competition policy and upholding the First Amendment’s protections for all Americans.

3. In 2017, the Trump administration formally discontinued and repudiated Operation Choke Point. This program, which involved the Justice Department and other federal agencies, pressured banks against transacting with certain industries which, while legal and financially viable, were considered to pose a “reputation risk” to banks. The Obama/Biden administration has been accused of using Operation Choke Point to target disfavored business sectors, including makers and sellers of firearms and ammunition. More recently, the Office of the Comptroller of the Currency issued a rule that would prohibit banks from discriminating against lawful, financially sound customers for ideological or political reasons.

Does the Justice Department have a valid role in telling banks which lawful and financially viable industries they should serve? If not, would you pledge as Associate Attorney General not to repeat the tactics of Operation Choke Point?

RESPONSE: I had no involvement with Operation Choke Point, but I agree with Attorney General Garland’s testimony that laws should be enforced without regard to politics or partisanship.

4. There are many gun control proposals being proposed or introduced in Congress, including licensing and registration schemes, bans on popular types of firearms, and repeal of the Protection of Lawful Commerce in Arms Act.
 - a. Do you support the enactment of additional federal gun control laws? If so, which proposals do you support?
 - b. Do you believe any proposal goes too far in infringing Second Amendment rights?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

5. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

6. According to press reports, the Biden administration recently reactivated a “migrant child facility” that was open “for only a month in summer 2019” during the Trump administration.¹ The practice of keeping children in these facilities was routinely criticized as “kids in cages” by Democrats and members of the media. Indeed, in 2007, while you were a Staff Attorney at the ACLU, you sued Michael Chertoff for detaining

¹ Siliva Foster-Frau, *First migrant facility for children opens under Biden*, Washington Post (Feb. 22, 2021), available at https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117_story.html.

children at the border, noting that “[t]here is simply no justification for imprisoning innocent children who pose no threat to anyone.”²

- a. What’s the difference between a “migrant child facility” and a “cage”?
- b. According to an updated *Washington Post* article, as of March 10, under the Biden administration “[m]ore than 8,500 migrant teens and children who crossed the border without their parents are being housed in Department of Health and Human Services shelters.” How do you plan on dealing with the rise in unaccompanied minors arriving at the Southern Border?³
- c. On October 22, 2020, you tweeted: “It is criminal. The Trump administration cannot reunite these kids with their parents. I am so angry right now. I have nothing more about this. #FamiliesBelongTogether.”⁴ Do you remain “so angry” about the more than 8,500 children currently being held in the custody of HHS without their parents?

RESPONSE: If I am confirmed, I will contribute to the whole-of-government effort to reform our immigration system in a way that’s consistent with our values, secures our borders, and protects our national interests.

7. Do you agree that DOJ litigation positions, such as the failure to defend in court agency actions like the “Remain in Mexico” policy, have contributed to the perceived incentives that underlie this border crisis? If not, why not?

RESPONSE: Because I am not in the Department, I cannot comment on the Department’s litigation positions unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and laws.

8. You tweeted on August 21, 2019 that you litigated the “horrifying conditions inside a TX detention center, where children were held with their parents awaiting decisions on asylum claims. The conditions were nothing short of inhumane: children were scared, depressed, even suicidal.”⁵
 - a. Given that you sued the Bush administration for their migrant-child detention policy, if confirmed, what specific steps do you intend to take to solve the current migrant-child crisis?
 - b. Should the Biden administration be held to the same standard as the Bush administration?

RESPONSE: It is my understanding that the Administration is undertaking a comprehensive review of our nation’s immigration policies to ensure they protect communities, secure our borders, and protect our national interests. With respect to

² ACLU, Press Release, *ACLU Challenges Illegal Detention of Immigrant Children Held in Prison-Like Conditions*, March 6, 2007, available at: <https://www.aclu.org/press-releases/aclu-challenges-illegal-detention-immigrant-children-held-prison-conditions>

³ Nick Miroff, *At border, record number of migrant youths wait in adult detention cells for longer than legally allowed*, *Washington Post* (March 10, 2021), https://www.washingtonpost.com/national/unaccompanied-minors-detention-cells/2021/03/10/a0d39390-81c6-11eb-bb5a-ad9a91faa4ef_story.html.

⁴ Tweet on October 22, 2020, available at: <https://twitter.com/vanitaguptaCR/status/1319460342519500801>.

⁵ Tweet on Aug. 21, 2019, available at: <https://twitter.com/vanitaguptaCR/status/1164234561380683776>.

matters of policy, the Department advances the policies of the President as long as they are consistent with the law.

9. What factors should the Justice Department consider in deciding whether or not to continue to defend the death sentences of Dzhokhar Tsarnaev and Dylann Roof on direct appeal?

RESPONSE: If I am confirmed as Associate Attorney General, I will enforce the law. The decision to pursue the death penalty requires the certification of the Attorney General and there's an extensive process at the Justice Department—one that I'm familiar with given my prior service at the Civil Rights Division. If confirmed, as I did before, I will look at every case individually on the facts and the law.

10. In your view, is a personal philosophical or religious objection to the death penalty on the part of President Biden a valid justification to abandon the defense of Dylann Roof's death sentence on direct appeal?

RESPONSE: As Attorney General Garland has explained, decisions concerning the Department of Justice's investigations and prosecutions must be based on the facts and the law. The Department has developed norms, policies, and traditions to protect the independence of those decisions, and President Biden has committed that he will not interfere with them. With respect to matters of policy, because the Department is part of the Executive Branch, the Department advances the policies of the President as long as they are consistent with the law.

11. In December 2020, the Justice Department finalized a rule prohibiting the inclusion of provisions in settlement agreements directing or providing for a payment or loan to a non-governmental person or entity that is not a party to the dispute, except in certain defined circumstances. The rule follows a 2017 memo from then-Attorney General Jeff Sessions, which was codified in the Department's "Justice Manual." As Attorney General Sessions stated, "[w]hen the federal government settles a case against a corporate wrongdoer, any settlement funds should go first to the victim and then to the American people—not to bankroll third-party special interest groups or the political friends of whoever is in power." In our phone conversation, we discussed the matter of slush funds. You assured me that the government isn't here to help special interest groups. At your hearing you went on to say that as Associate Attorney General you would follow that regulation. I thank you for that. However, the answer presupposes the continued existence of that regulation. Should you be confirmed, then, will you oppose the repeal of that regulation?

RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. I understand the importance of these guardrails and will comply with these regulations. I do not know the status of any review of these regulations. If confirmed, I would want to

understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

12. The Biden administration has signaled that it intends to revisit the final rule prohibiting slush funds. As Associate Attorney General, however, you will need to approve all settlement agreements. Even if the rule is rescinded or otherwise watered down, will you agree not to approve any settlements that send money to non-affected third parties?

RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. I understand the importance of these guardrails and will comply with these regulations when settlements come to me for approval. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

13. In the absence of a regulation prohibiting the use of settlements with non-affected third parties, what is the constitutional justification for their continued use?

RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. I understand the importance of these guardrails and will comply with these regulations. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

14. During her nomination hearing Judge Ada Brown, a Black woman from Texas, said, “*Brown* is a landmark case. Because of *Brown v. Board of Education* I went to an excellent integrated school where my father went to a very poor segregated school. That being said, I think it would be violative of Canon 3(a)(6) for me to give a thumbs up or a thumbs down as to whether or not the Supreme Court correctly decided the case.” In other words, a Black woman came before the Judiciary Committee and testified as to the personal impact *Brown* had on herself and her family while still adhering to *what she viewed* as the ethical obligations that bound her.

You said of this answer in a letter that it was below the “moral floor” for a federal judicial appointment.

- a. Do you regret telling the Senate that a Black woman’s testimony about the personal importance of *Brown* to her and her family didn’t meet the “moral floor” for confirmation?
- b. Assuming Judge Brown was sincere in her beliefs about her ethical restrictions, was it fair to insist that she subjectively violate the Code of Conduct in order to give an answer that you would find satisfying about a case—that she testified—had a profound impact on her life as a Black woman in the South?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my

tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration's judicial nominees. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees.

15. Since 2018, plaintiffs' counsel have filed thousands of lawsuits and sent an untold number of settlement demand letters to business owners alleging their websites are not accessible to the blind or visually impaired, in violation of Title III of the Americans with Disabilities Act (ADA). The bulk of these claims allege that private websites qualify as places of public accommodation and that websites with access barriers—such as those without compatible screen-reading software—deny individuals the right of equal access. Will the Department provide clarity on the law by resolving the question of whether private websites fall under the ADA? And will the Department provide clear rules and guidance on how to comply with the law?

RESPONSE: As a general matter, it is very important for people to understand their rights, and for covered entities to understand their obligations, under the law. If confirmed, I would work closely with career officials in the Justice Department and community stakeholders, including small businesses, to consider whether any rulemaking or guidance is necessary in this area, and if so, to develop an appropriate response.

16. Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?

RESPONSE: If confirmed, I would approach this question as I would any issue, by working with subject-matter experts at the Justice Department, including career lawyers, and seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

17. Will you commit, if confirmed, to both seek and follow the advice of the Department's career ethics officials on recusal decisions?

RESPONSE: Adherence to government ethics rules is vitally important, including for maintaining public faith in the impartial administration of justice. If confirmed, I will continue to consult the Department of Justice's career ethics officials about recusal issues and make decisions based on the facts, the law, and the applicable rules, policies, and practices.

18. Will you recuse from all cases in which the Leadership Conference or its affiliates have taken litigation positions?

RESPONSE: Adherence to government ethics rules is vitally important, including for maintaining public faith in the impartial administration of justice. If confirmed, I will

continue to consult the Department of Justice’s career ethics officials about recusal issues and make decisions based on the facts, the law, and the applicable rules, policies, and practices.

19. Are state laws protecting the unborn under the purview of the Civil Rights Division? If so, how?

RESPONSE: In general, the Civil Rights Division is responsible for enforcing “all Federal statutes affecting civil rights, including those pertaining to elections and voting, public accommodations, public facilities, school desegregation, employment (including 42 U.S.C. 2000e-(6)), housing, abortion, sterilization, credit, and constitutional and civil rights of Indians . . . and of institutionalized persons.” 28 C.F.R. § 0.50(a).

20. Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?

RESPONSE: In *Casey*, the Supreme Court held that states may regulate abortion prior to viability based on the state’s interest in maternal health and potential life, provided those regulations did not impose and do not have “the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 877 (1992).

21. Under the Religious Freedom Restoration Act the federal government cannot “substantially burden a person’s exercise of religion.”

- a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?
- b. How is a burden deemed to be “substantial[.]” under current caselaw? Do you agree with this?

RESPONSE: The Religious Freedom Restoration Act provides that the federal government may not “substantially burden a person’s exercise of religion” unless it “demonstrates that application of the burden to the person” is “in furtherance of a compelling government interest” and is “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1. As the Supreme Court’s decisions illustrate, a reviewing court is ultimately responsible for determining whether a law substantially burdens a person’s exercise of religion. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719-26 (2014). But the Court has emphasized that a court making that determination must not second-guess the plausibility or reasonableness of the religious adherent’s beliefs. *Id.* at 723-26. Instead, the court’s “narrow function” is to determine whether the adherent’s asserted beliefs reflect an “honest conviction” and whether the challenged law “imposes a substantial burden” on the adherent’s ability to act in accordance with those beliefs. *Id.* at 723-24. Moreover, in *Hobby Lobby*, for example, the Court held that the contraceptive-coverage requirement promulgated under the Affordable Care Act imposed a substantial burden on the plaintiffs’ exercise of religion. By requiring the plaintiffs to arrange for such coverage, the Court reasoned, the requirement demanded “that they engage in conduct that seriously violates their religious

beliefs,” and if they did not comply, they would have faced “substantial economic consequences” in the form of “substantial” penalty assessments. *Id.* at 720-21. If confirmed, I will enforce the Constitution and federal laws, consistent with Supreme Court precedent, free from any improper motivation.

22. As you know, enforcement of the antitrust laws is extremely important to ensure that markets are fair and participants don’t engage in abusive activity that harms consumers. I’ve been particularly active in making sure that the Justice Department and Federal Trade Commission carefully scrutinize mergers and acquisitions, as well as look out for anti-competitive behavior and predatory practices. Over the years, I’ve focused on competition issues in a couple sectors of our economy – the agriculture industry which is important to my state of Iowa, and the health care industry.
- a. Do you agree that the Justice Department has a critical role to play in these areas?
 - b. Will you commit to making antitrust enforcement a top priority for the Department under your leadership? Especially in the drug, health care and agriculture sectors?

RESPONSE: The full and fair enforcement of our antitrust laws is critical to protecting and promoting market competition. I agree that the Justice Department has a critical role to play in the enforcement of the antitrust laws in the important agriculture and health care markets. If confirmed, I will support vigorous enforcement across all sectors of our economy and I will oversee the Antitrust Division free from any improper influence—partisan, corporate, or otherwise.

23. How will your Justice Department work with our allies and trading partners on issues of international antitrust?

RESPONSE: I believe that effective enforcement of the U.S. antitrust laws in a global economy requires cooperation with our allies and trading partners. The Department of Justice’s Antitrust Division works closely with its counterparts around the world through both bilateral relationships and participation in international organizations. If I am confirmed, I look forward to learning more about the current status of these important efforts and working with the Antitrust Division to reinforce and strengthen them.

24. Millions of Americans across the United States rely on social media platforms to run small businesses, advocate on political issues, and advertise to customers. Just as these big tech companies have increasingly begun to censor views that they don’t agree with, they have also increasingly removed pages and advertisements from their platforms. Some of these decisions are being made through automated computer detection sometimes without a human being even evaluating the content before it is removed, and once a page or material has been deemed to be against the platform’s policies the small business or user can be permanently banned and removed without any meaningful redress. There is usually no due process and many times very little explanation for what the violation was other than a statement that there was a violation of the terms of service.

With the large market dominance of these platforms and the importance of having a presence on social media, along with the lack of due process that is afforded in the removal process, is there a role that the Justice Department can play in ensuring fair and even treatment of users on social media platforms?

RESPONSE: Freedom of speech is enshrined in the Constitution's First Amendment and protecting it by maintaining a strong marketplace of ideas is critical for preserving our democracy. I have not studied the extent to which current law would allow the Justice Department to be involved in ensuring fair and equal treatment of users on social media. If confirmed, I would welcome the opportunity to learn more about this issue.

25. According to reporting from *Bloomberg* the company Avantor, where your father is Chairman, was producing and selling chemical precursors used in the illegal heroin trade in Mexico.⁶ The situation is currently under investigation by Mexican authorities.⁷ Further reporting has shown that both the particular precursor Avantor was selling and the form in which it was being sold was unlikely to have had legitimate use.⁸ Are you aware of this?

RESPONSE: I am aware of the allegations.

26. According to your public financial disclosure you hold up to \$55 million dollars in Avantor stock. Have you profited financially from Avantor's chemical trade in Mexico?

RESPONSE: As a shareholder with no role in Avantor, I am not able to say whether and how much I have profited from the various parts of Avantor's business. Per Bloomberg reporting, "total sales [of acetic anhydride by Avantor's Mexican subsidiary in 2019] were approximately \$300,000."

27. The decriminalization of heroin and methamphetamine possession would increase demand for those drugs and therefore increase demand for their chemical precursors. Do you agree, then, that there is a potential undisclosed conflict of interest in your prior public advocacy for the decriminalization of heroin and methamphetamine possession because of the likely profit such a policy would allow a precursor-manufacturer like Avantor—whose stock you hold—to capture?

RESPONSE: I do not see a conflict of interest. I have never advocated for the decriminalization of all drugs, and I do not support the decriminalization of all drugs. In 2012, I coauthored an article that advocated for states to decriminalize and defelonize

⁶ Cam Simpson, Michael Smith, and Nacha Cattan, *Heroin's Hidden Ingredient Is a Chemical Made by U.S. Companies*, *Bloomberg Businessweek* (Aug. 26, 2020), <https://www.bloomberg.com/news/features/2020-08-26/u-s-drug-crisis-is-made-in-mexico-with-american-raw-materials>.

⁷ Cam Simpson, Michael Smith, and Nacha Cattan, *Avantor Stops Sale of Chemical in Mexico Used to Make Heroin*, *Bloomberg* (Sept. 15, 2020), <https://www.bloomberg.com/news/articles/2020-09-15/avantor-stops-sales-of-chemical-in-mexico-used-to-make-heroin>.

⁸ Cam Simpson, Nacha Cattan, and Akshat Rathi, *Politics Could Imperil Probe of Narco Access to U.S. Chemicals*, *Bloomberg* (Jan. 27, 2021), <https://www.bloombergquint.com/business/politics-could-imperil-probe-of-narco-access-to-u-s-chemicals>.

simple possession “of all drugs, particularly marijuana, and for small amounts of other drugs.” While my position on these issues has evolved, because of my experience working at the Department of Justice and an experience with addiction in my own family, I have never communicated or believed that all drugs should be legal. Per my ethics agreement, signed March 2, 2021, I have committed to recusing myself from any matters relating to Avantor. As I stated at my confirmation hearing, I will, if confirmed, divest from all individual stocks I control, including Avantor. The Trustee of the 2008 and 2014 Trusts intends to divest both Trusts of any Avantor stock as soon as possible, which will occur during the next “open window” period, which is expected to begin on April 30, 2021.

28. If you are confirmed, will you agree to fully divest yourself of Avantor stock?

RESPONSE: Yes.

29. Will you agree not to take any role in the enforcement of federal criminal drug laws as doing so may implicate or give the appearance of implicating a financial conflict of interest? Note that as Associate Attorney General, neither DEA nor the Narcotic and Dangerous Drug Section of the Criminal Division would fall under your supervision; therefore there is no reason for you to refuse to do so.

RESPONSE: Were a matter to arise that presented a question of a potential conflict, I would seek the advice of the career ethics attorneys.

30. Will you agree to make no further advocacy statements regarding illegal drugs during your appointment, as doing so may implicate or give the appearance of implicating a financial conflict of interest?

RESPONSE: The Department has standards of conduct for online communications, media contacts, and information sharing with the public. I will follow Department and government-wide standards of conduct.

31. President Biden issued a document in his first week in office announcing “agency actions that heads of the relevant agencies will review in accordance with the Executive Order: ‘Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.’” This list included the “Notice of Availability of the Record of Decision for the Proposed Willow Master Development Plan Project, Alaska,” 85 Fed. Reg. 69351 (November 2, 2020).

The Willow project was leased by the Clinton administration and the project was pursued under the Obama administration’s management plan. Thus, the Willow project is not a new plan or commitment of infrastructure. The Department of the Interior followed all laws and created a robust and scientifically rigorous environmental impact statement, satisfactorily meeting the requirements of NEPA for the Willow Project.

This project is incredibly important for the State of the Alaska and the Alaska Native people that will benefit from infrastructure development and revenues from this project.

The project is estimated to contain 450 to 800 million barrels of recoverable oil. It will provide over 2,000 construction jobs and hundreds of long-term jobs. Revenues to the State of Alaska from the project will raise about \$2.3 billion and there will be an additional \$7.6 billion in federal revenues. The project is currently in litigation, impeding this season's construction and the long term permitting and development of the project in the future.

- a. Will you commit to defending the robust environmental impact statement and record of decision for the Willow project during the existing litigation and future litigation?
- b. Will you commit to defend previous environmental rulemakings and records of decision that have already been developed by non-political career civil servants and have completed the entire permitting process?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the Willow project, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

32. Do you agree with the following statement: "One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits."

RESPONSE: This appears to be a quote from the majority Supreme Court opinion in *Michigan v. EPA*. If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.

33. On October 5, 2017, you tweeted: "Yes, freedom of religion is a fundamental right, but it is not an absolute right. It cannot be used as shield to permit discrimination."⁹
- a. Do you stand by this statement?
 - b. Is this a correct understanding of the First Amendment and the Religious Freedom Restoration Act?
 - c. Will this be the understanding of the Justice Department, should you be confirmed?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution's First Amendment and in other federal laws, including the Religious Freedom Restoration Act. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department's Civil Rights Division. In addition to overseeing the Division's enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. If confirmed, I will uphold all rights

⁹ Tweet on October 5, 2017, available at: <https://twitter.com/vanitaguptaCR/status/916346019004198912>.

guaranteed by the Constitution and other federal laws—including religious freedoms—to the fullest extent of the law.

34. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution’s First Amendment and in other federal laws. It is also vital to a pluralistic society, and the legal rights associated with it must be respected. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department’s Civil Rights Division. In addition to overseeing the Division’s enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. If confirmed, I will uphold all rights guaranteed by the Constitution and other federal laws—including religious freedoms—to the fullest extent of the law.

35. Do you agree with the Supreme Court that the principle of church autonomy goes beyond a religious organization’s right to hire and fire ministers? What, in your view, are the limits on church autonomy consistent with what the Supreme Court has said?

RESPONSE: In our *Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court reaffirmed that the First Amendment protects the right of religious institutions “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Id.* at 2055 (citation omitted). There, although the plaintiff schoolteachers “were not given the title of ‘minister,’” the Court held that their cases fell within the so-called “ministerial exception” to employment discrimination laws. *Id.* Under that exception, “courts are bound to stay out of employment disputes involving those holding certain important decisions with churches and other religious institutions.” *Id.* at 2060. The Court held that “[t]he religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission.” *Id.* at 2055. In finding the facts sufficient to decide the case before it, the Court declined to adopt a “rigid formula” for determining whether an employee falls within the exception. *Id.* at 2069 (citation omitted).

36. Do you agree that the Religious Freedom Restoration Act requires assessing compelling government interests “to the person” substantially burdened by a government action?
- If not, why not?
 - If so, can *general* interests restrict religious liberty, or must the interests be defined more precisely?

- c. How would you implement this principle in Justice Department guidance?

RESPONSE: The Supreme Court has held that the Religious Freedom Restoration Act “requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law ‘to the person’—the particular claimant whose sincere exercise of religion is being substantially burdened.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-431 (2006) (citation omitted). The Court has thus “looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants.” *Id.* at 431. If confirmed, I will seek to ensure that all Department of Justice guidance, including any guidance on this subject, is consistent with any relevant constitutional or statutory provisions and with applicable precedent.

37. Do you agree with the following statements?

- a. We live in a pluralistic society with people of widely diverse faith traditions. Religious freedom for all is part of our country’s bedrock, from the enactment of our Constitution to the establishment of our more recent statutes that protect against religious discrimination.
- b. Title VII requires that employers not discriminate against applicants or employees because of their religious beliefs, observances, or practices and that employers accommodate religious beliefs, observances, and practices, absent undue hardship.
- c. Federal civil-rights regulators should seek to learn more about the extent to which employees request time off for prayer or Sabbath observance, seek exemption from grooming or dress codes, or seek to avoid participation in hot-button practices like abortion or LGBTQ celebration.
- d. It is important to improve religious discrimination awareness for employees and employers while encouraging meaningful dialogue between employees, employers, and the government.
- e. The federal government should prevent and remedy unlawful religious discrimination.

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution’s First Amendment and in other federal laws. It is also vital to a pluralistic society, and the legal rights associated with it must be respected. Title VII prohibits employment discrimination on the basis of many protected classes, including religion, and generally requires employers to accommodate religion unless it would impose an undue hardship. As an employer, the Justice Department must abide by these obligations, and, as a law enforcement agency, the Justice Department should vigorously prevent and seek remedies for unlawful employment discrimination on the basis of religion. If confirmed, I would work to ensure that the Justice Department lives up to those ideals.

38. Following the Supreme Court’s opinion in *Espinoza v. Montana Department of Revenue*, the Department of Justice issued guidance summarizing religious liberty protections applicable to organizations that participate in the Department’s grant programs. According to the guidance, absent a compelling government interest, the Department

shall not disqualify otherwise-eligible recipients from a public benefit solely because of their religious character. Will you keep this guidance in place?

RESPONSE: Because I am not presently at the Justice Department, I am not aware of all of the details surrounding the referenced guidance, and I have not had occasion to study the issue in great detail. However, if confirmed, I would welcome the opportunity to do so, and would work to ensure that all Department actions, including funding decisions, comply with applicable Supreme Court precedent.

39. Last summer the Department of Justice held voluntary training seminars on religious liberty for Department employees. Is it important for Justice Department Attorneys to be familiar with religious-liberty principles?

RESPONSE: Because I am not presently at the Justice Department, I am not aware of the details surrounding the training seminars on religious liberty for Department employees that you reference. However, if confirmed, I would welcome the opportunity to learn more about them and identify ways to promote effective training of Department personnel.

40. Should the Justice Department have a Religious Liberty Task Force?

RESPONSE: Because I am not presently at the Justice Department, I am not aware of the details surrounding whether or not the Department should have a Religious Liberty Task Force. However, if confirmed, I would welcome the opportunity to look into the issue, in consultation with career attorneys and Department leadership, and determine effective way to enforce religious liberty protections.

41. In August of last year, Sen. Wyden and I released a report on syndicated conservation-easement transactions. That report concluded that those transaction are abusive tax shelters and that the government should do more to stop them. The Department of Justice's Tax Division is already litigating one case against a company called EcoVest, which was featured prominently in our report. I believe it is imperative that Americans believe the nation's tax laws are enforced fairly. If you are confirmed, can you commit that the Tax Division will do everything it can to help stop these abusive tax shelters, including seeking criminal charges where appropriate?

RESPONSE: If I am confirmed as Associate Attorney General, I would be committed to ensuring that Tax Division's enforcement of our tax laws is undertaken in a fair and even-handed manner. Because I am not presently at the Department, I am not aware of all the relevant facts concerning the EcoVest case and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

42. Prosecutors within the Human Trafficking Prosecution Unit in DOJ's Civil Rights Division work closely with federal prosecutors and law enforcement personnel to

streamline human trafficking investigations, ensure consistent enforcement of trafficking statutes, and identify multijurisdictional trafficking networks. The FBI's Crimes Against Children and Human Trafficking program also focuses on detection and investigation of human trafficking crimes.

- a. If confirmed, will you ensure that the investigation and prosecution of human trafficking offenses remains a top priority for the Department?
- b. How will you do so?

RESPONSE: Yes. During my tenure leading the Department's Civil Rights Division, I worked closely with Department leaders and career lawyers to combat the scourge of human trafficking. If I am confirmed, I will continue this important work.

43. Do you intend to advocate for the continuation of Operation Lady Justice?

RESPONSE: Because I am not currently at the Department, I am not familiar with this program. If confirmed, I look forward to reviewing this and any related efforts.

44. Does illegal immigration impose costs on border communities?

RESPONSE: If I am confirmed as Associate Attorney General, I will contribute to the whole-of-government effort to reform our immigration system in a way that is consistent with our values, secures our borders, and protects our national interests.

45. When was the last time you visited the U.S.-Mexico border?

RESPONSE: In 2009, I visited the Rio Grande Valley in connection with my representation of the plaintiffs in *Castelano v. Clinton*, No. 7:08-cv-857 (S.D. Tex. Aug. 14, 2009).

46. When was the last time you visited the U.S.-Mexico border outside of a port of entry?

RESPONSE: Please see my response to Question 45.

47. Former Attorney General Barr circulated an April 27, 2020 memorandum directing the Civil Rights Division and U.S. Attorney's Offices to participate, where appropriate, in civil litigation over excessive or unequal COVID-19 restrictions, including in defense of religious liberty. Will you continue the Justice Department policy, articulated in an April 27, 2020 memorandum, of participating, where appropriate, in civil litigation to defend Americans' religious freedom against unnecessary interference during the COVID-19 pandemic? If not, why not?

RESPONSE: Because I am not presently at the Justice Department, I am not aware of the details surrounding the policy you reference. However, if confirmed, I look forward to reviewing the policy and consulting with Department leaders and career staff regarding it. Religious liberty is personally important to me, and the freedoms associated with it should be protected.

48. When the Department of Homeland Security described the Supreme Court’s DACA opinion as having “no basis in law,” Judge Garufis, in the Eastern District of New York, took exception to the executive branch criticizing a Supreme Court opinion. He asked a career Justice Department lawyer, “I’m just wondering how a decision by the Supreme Court could be deemed by a federal agency to have no basis in law. Can you explain that to me[?]” The judge went on, “The attorney general should advise his client Mr. Wolf that it is not [a] benefit to anyone to have a federal agency take issue with a decision of the Supreme Court. I’m very troubled by anyone who would write such a thing on a document issued by a federal agency regarding a decision by the U.S. Supreme Court or any court, until it is overruled or reversed, any federal court.”
- a. Under your leadership will the litigating components under your supervision agree not to “take issue with a decision of the Supreme Court”?
 - b. Under your leadership will the litigating components under your supervision and their client agencies maintain publicly that all Supreme Court holdings have a sound basis in the law?

RESPONSE: Like Attorney General Garland, I have great respect for the nation’s courts and the judges who sit on them. I am likewise aware that the Department of Justice and its client agencies may sometimes disagree with decisions issued by the Supreme Court or other courts, and may express that disagreement in legal briefs or public statements. I share his commitment, if confirmed, in seeking to ensure that all such statements made by divisions within my purview are appropriately respectful of the courts and their role in our constitutional system.

49. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. You have been very critical of it in the past.
- a. Would you allow a member of the Federalist Society to serve on your staff as Associate Attorney General?

RESPONSE: Yes.

- b. Do you agree with Attorney General Garland that a member of the Federalist Society should be allowed to serve on front-office staff within the Justice Department?

RESPONSE: Yes.

- c. Do you agree with Attorney General Garland that a member of the Federalist Society should be allowed to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?

RESPONSE: Yes.

50. In letters to the Senate you have referred to “the ultraconservative Federalist Society.” What makes an organization “ultraconservative” rather than simply “conservative”?

RESPONSE: Throughout my career, I have had the opportunity to work with members of the Federalist Society on the First Step Act and other bipartisan criminal justice reforms. If I am confirmed as Associate Attorney General, I would welcome the opportunity to continue working with individuals across the political and ideological spectrum on behalf of the people of the United States.

51. Do Blaine Amendments violate the Constitution?

RESPONSE: The “Blaine Amendment of the 1870s” was a failed proposal to amend the U.S. Constitution to prohibit states from aiding religious schools. *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246, 2259 (2020). In *Espinoza*, the Supreme Court considered a provision of the Montana Constitution that prohibited any state aid to any school controlled by a “church, sect, or denomination.” *Id.* at 2251, 2259. The Court held that the Montana Supreme Court’s application of that no-aid provision to strike down a program to provide tuition assistance to parents who send their children to private schools violated the First Amendment.

52. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

RESPONSE: Voter fraud is a crime. If I am confirmed as Associate Attorney General, my mandate will be to enforce the laws and Constitution of the United States.

53. When we spoke on the phone we discussed the tension between claims of widespread voter suppression and the record voter turnout in the 2020 election. As I recall, you credited the latter to widespread litigation and legislation particularly in the wake of the COVID-19 pandemic. As the pandemic subsides, is it necessarily voter suppression for a State to enact legislation to return the mechanics of voting to what they were prior to the pandemic?

RESPONSE: I was grateful for your willingness to meet with me and discuss these issues. Throughout my career as a lifelong civil rights lawyer, I have advocated for every American’s right to vote. These issues must be considered on a case-by-case basis, following relevant federal law, with analysis of any specific legislation.

54. The Civil Division continues aggressively to move to dismiss potentially meritorious qui tam actions around the country. Its policy, as set forth in the controversial Granston Memo, raises serious policy questions, as the Division’s kill-the-case practice has seriously eroded public confidence in the integrity of government-supported programs. There need to be significant internal checks and balances put in place, especially since career DOJ lawyers are aggressively administering the vague provisions of the Granston Memo.

- a. Will you commit to halting all qui tam dismissals until you have undertaken and completed an in-depth review of the Division’s qui tam enforcement policy and practice?

- b. Will you also commit to specifically requiring from the career staff a reasoned and persuasive explanation set forth in writing — for your personal approval — before DOJ lawyers take the serious step of moving to dismiss any duly filed qui tam action?

RESPONSE: The False Claims Act, and its *qui tam* provisions, play a critical role in the federal government’s effort to ensure that those who do business with the government do so honestly. The False Claims Act is a vital tool for fighting fraud and abuse involving federal funds. The Department publicly reported that in fiscal year 2020 it recovered over \$2.2 billion under the Act, and that a significant portion of these recoveries were attributable to cases filed under the Act’s *qui tam* provision. I am not at the Department, and I am not familiar with recent deliberations regarding when and how the Department seeks to dismiss *qui tam* matters. If I am confirmed as Associate Attorney General, I will work to ensure that the Department supports the pursuit of meritorious whistleblower claims on behalf of the United States.

55. Another Justice Department nominee has said, “As a civil rights lawyer with matters that regularly go before the Supreme Court, I can’t underscore how dangerous it will be to have [then-Judge Brett] Kavanaugh on the Court, a man who harbors such bias, rage, fury and is so easily unhinged. We should expect a spike in recusal motions for sure.” For the questions below, please also explain why you agree or disagree with the statement:
 - a. Do you agree that Justice Kavanaugh is “dangerous” and “easily unhinged”?
 - b. Are you confident that Justice Kavanaugh will be fair in hearing cases from the Justice Department under your leadership?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body and I have full respect for his place on the Court.

56. Attorney General Merrick Garland was “not familiar with the statement quoted [in Question 55]” but “[b]ased on my experience serving with Justice Kavanaugh on the D.C. Circuit for many years, I would not describe him that way.” Do you agree with Attorney General Garland?

RESPONSE: I have no reason to dispute Attorney General Garland’s perspective. I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body and I have full respect for his place on the Court.

57. Attorney General Garland also expressed his confidence in Justice Kavanaugh’s ability to “be fair in hearing cases”? Do you agree with Attorney General Garland?

RESPONSE: Yes.

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

RESPONSE: In early December 2020, I was called asking if I would agree to be vetted for a position at Department of Justice. I learned of the exact position I was being vetted for a couple of weeks later. President-elect Biden officially presented the offer to me in early 2021. The President-elect publicly announced his intent to nominate me on January 7, 2021, and formally sent that nomination to Congress on January 20, 2021.

59. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

RESPONSE: No.

60. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

RESPONSE: No.

61. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

RESPONSE: No.

62. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

RESPONSE: I was in contact with the Open Society Foundation in early December 2020, regarding Leadership Conference grants. These contacts did not relate to my selection process.

63. As I noted at your hearing, the role of Associate Attorney General can be broadly described as having authority over the "civil" side of the Justice Department. As I also noted, you have received widespread support from criminal-justice reformers as well as some support from law enforcement organizations. I have told you I appreciate your work on criminal-justice reform but I still find this apparent mismatch somewhat odd.

- a. As Associate Attorney General what do you expect your direct authority to be in the Justice Department?

RESPONSE: The Office of the Associate Attorney General advises and assists the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs pertaining to a broad range of civil justice, federal and local law enforcement, and public safety matters. Among other initiatives, the Office oversees the Antitrust Division, the Civil Division, the Civil Rights Division, the Environment and Natural Resources Division, the Tax Division, the Office of Justice Programs, Community Oriented Policing Services (COPS), the Community Relations Service, the Office on Violence Against Women, the Office of Information Policy, the Executive Office for U.S. Trustees, and the Foreign Claims Settlement Commission.

- b. Has Attorney General Garland, President Biden, Ron Klain, or any other official in the current administration assured you a role in the law enforcement or criminal justice components of the Justice Department that typically report to the DAG? If so, who made such assurances and what do you understand that role to be?

RESPONSE: No.

- 64. Former Attorney General Bill Barr designated former U.S. Attorney John Durham as a special counsel to continue his investigation into the Crossfire Hurricane scandal. During our phone conversation, you mentioned that you would like to be a partner with me, as you similarly place a high regard on government transparency. Given the value you place on government transparency:
 - a. Will you commit to allowing Special Counsel Durham to continue his investigation, unimpeded should the authority to do so fall to you?
 - b. Will you commit to publicly releasing the unredacted version of his report should the authority to do so fall to you?

RESPONSE: I am not aware of the current status of Mr. Durham’s investigation beyond what the media has reported. Decisions about the investigation ultimately fall to Attorney General Garland, and I would follow his lead on this matter.

- 65. Do you agree with the following statement: “Respect for human life finds an ultimate expression in the bond of love the mother has for her child. ... Whether to have an abortion requires a difficult and painful moral decision. While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained.”

RESPONSE: I am not familiar with the statement quoted. If I am confirmed as Associate Attorney General, my mandate will be to enforce the law and Constitution.

- 66. Did you support the appointment of Judge Richard Myers II to the United States District Court for the Eastern District of North Carolina?
 - a. Do you agree that Myers, a Jamaican immigrant and widely respected law professor, was a strong candidate to fill this fourteen-year vacancy on the EDNC?

- b. You have noted in the past that 30% of the district that the EDNC is African American. Do you think that Judge Myers represents that population?

RESPONSE: The Leadership Conference on Civil and Human Rights did not oppose the appointment of Judge Richard Myers II to the United States District Court for the Eastern District of North Carolina.

67. You previously tweeted: “Whether in 1984 or 2019, there is nothing funny or acceptable about the KKK or blackface. Ralph Northam must resign.”¹⁰
- a. Do you still stand by this sentiment?
 - b. Should Governor Northam have resigned?

RESPONSE: I stand by the sentiment that there is nothing funny or acceptable about the KKK or blackface.

68. In our phone call, you mentioned that consent decrees are “one tool of many” to change the behavior of state and local law enforcement. You noted that grant programs are frequently the preferred way to do so, preferring “carrots” to “sticks.” Do you agree that, in our federal system, the general presumption should be against the federal government changing the behavior of state and local law enforcement, whether by carrot or by stick?

RESPONSE: I agree that any federal interventions or incentives with respect to state and local law enforcement should be cautiously tailored to the particular problems or goals identified. In 1994, Congress gave the Department the authority to investigate police departments where there may be a pattern or practice of unconstitutional policing, and the Department often opened these investigations at the request of local officials including police chiefs and mayors. Consent decree authority is and should be judiciously used. At the end of my tenure at Civil Rights Division, there were 14 police department consent decrees in a nation of over 17,000 police departments.

69. In your SJQ, you explained that in your prior role at the DOJ, you “regularly engaged with a broad range of stakeholders in the course of this work.”
- a. If confirmed, do you plan to continue the practice of consulting with a broad range of stakeholders?
 - b. How will you decide which stakeholders will receive consultation?

RESPONSE: Yes. For example, consultation with police officers, local elected leaders and police chiefs, mental health and drug treatment experts, community residents, members of the respective Congressional delegation, and local civil rights leaders is crucial to any police department investigation and the success of any consent decree, should one be sought. The Justice Department should be open to hearing from those who have a stake in their police department and police-community trust and wish to have their views considered.

70. My Republican colleagues and I frequently hear from a variety of stakeholders that are probably different from the ones you’re used to dealing with. Do you commit to

¹⁰ Tweet on Feb. 1, 2019, available at: <https://twitter.com/vanitaguptaCR/status/1091534128577695751>.

establishing a mechanism whereby these stakeholders can get access to senior Justice Department leadership?

RESPONSE: If I am confirmed as Associate Attorney General, I would welcome the opportunity to work with a diverse range of stakeholders across the ideological spectrum, including stakeholders that I may not have met with in the past. I have a long and demonstrated record of bipartisanship and a history of building coalitions and bringing conservative and liberal voices to the table.

71. There has been a marked and deplorable increase in violent crimes committed against Asian-Americans in California and Jewish Americans in New York. Given the reporting on many of these crimes it is unfortunately the case that many of them may count as hate crimes.
- a. Should the Justice Department take the race of the perpetrator into account in determining whether to bring federal hate-crime charges in these cases?
 - b. In determining whether to bring federal hate-crime charges in these cases should the Justice Department worry about any disparate impacts such charges might have on other minority communities?

RESPONSE: I am aware of and saddened by the regrettable rise in hate incidents and hate crimes across America, including hate crimes directed at Asian Americans and Jewish Americans. No one should feel unsafe or be victimized because of their race or religion, regardless of the race of the perpetrator. If confirmed, I will work to ensure that the Department zealously enforces the hate crimes legislation that Congress has passed to protect all Americans from such crimes.

72. The dark money advocacy group Demand Justice has launched an advertising campaign comparing a number of the current Supreme Court justices to Jim Crow-era segregationists. Brian Fallon, the executive director for Demand Justice, states the group aired the ad to “bring attention to this case and maybe shame Roberts and at least one other conservative out of gutting what remains of the Voting Rights Act” and to “pressure Congress to pass the John Lewis Voting Rights Advancement Act.”¹¹ You have previously expressed your support for Demand Justice.¹²
- a. Is it appropriate to compare current justices on the Supreme Court to segregationists of the Jim Crow era?
 - b. Is it appropriate to compare current justices on the Supreme Court to segregationists of the Jim Crow era in order to “shame” them as they deliberate over pending litigation?

¹¹ Theodor Meyer, *Progressive group launches ad comparing Supreme Court justices to segregationists*, Politico (March 1, 2021), <https://www.politico.com/news/2021/03/01/progressives-voting-rights-bill-471946>.

¹² Tweet on May 3, 2018, available at: <https://twitter.com/vanitaguptaCR/status/992133229565173767> (“Welcome to the fight, @WeDemandJustice. Looking forward to working with you to #ProtectOurCourts and resist Trump’s assault on our civil rights.”).

RESPONSE: I am not familiar with the advertisement referenced. I have tremendous respect for the Supreme Court and I take very seriously the independence and integrity of the federal judiciary.

73. You expressed concern in your hearing that your social media activity contributed to the toxic environment of Twitter.
- a. Do you believe that the campaigning on both sides of nomination fights has also become toxic?
 - b. Do you believe comparing Supreme Court Justices to segregationists contributes to a toxic environment surrounding nominations?

RESPONSE: The rhetoric on social media has become harsh over the last several years, and nominations have not been immune. President Biden has stated it is time to lower the temperature, and I agree, and pledge to do so.

74. In a webinar hosted by Arabella Advisors on June 18, 2020, you commented that you support diverting federal funds to “community-based support systems.” Which federal funds did you mean?

RESPONSE: I do not recall the particular context of that comment, but the federal government often provides funds to community-based support systems through Congressionally created grants.

75. In answering questions at your hearing, you attempted to distinguish your advocacy on behalf of your organization from your personal views. Yet in a letter to the Senate you said of now-Judge Stuart Kyle Duncan, a former public-interest impact litigator himself, “He has aggressively advanced a radical **personal agenda** to set back LGBT rights, voting rights, immigrant rights, women’s reproductive freedom, and criminal justice progress.”¹³ Can you provide an account for how Kyle Duncan’s advocacy views ought to be imputed to him personally that does not also impute your advocacy views to you personally?

RESPONSE: I am proud of my career as a civil rights advocate. I have described the difference between my role of the President and CEO of a coalition of over 200 civil rights organizations and my mandate if confirmed as Associate Attorney General. I have immense respect for the distinction between these roles.

76. What is “superprecedent”? Which, if any, cases count as “superprecedent”?

RESPONSE: My understanding is that “superprecedent” is a term that has been used by some members of the Committee to refer to particular cases of the Supreme Court that they believe deserve particular reverence under the doctrine of stare decisis. If confirmed as a Department of Justice official, my mandate will be to ensure that the Department of

¹³ Available at <https://civilrights.org/resource/oppose-confirmation-stuart-kyle-duncan-u-s-court-appeals-fifth-circuit/>. (emphasis added)

Justice follows all Supreme Court precedent, regardless of whether it should be characterized as “superprecedent” or not.

77. In 2017, you received money from the Open Society Foundations’ New Executives Fund. The money “provides key support to new nonprofit heads to help organizations navigate leadership transitions.”¹⁴
- How much money did you receive from the Open Society Foundation?
 - What specific support did it provide?
 - How was the money or support specifically used?

RESPONSE: The New Executives Fund (NEF) is an initiative of the Open Society Fellowship that aims to support newly appointed executive directors and chief executive officers. The Leadership Conference received \$230,000, used for (1) strategic planning with the staff; (2) upgrading communications and development department systems; and (3) hiring a consultant to help strengthen board governance.

78. Racial segregation and critical theory are increasingly moving into K–12 public education. In Burbank public schools, teachers are no longer allowed to teach classic texts of racial tolerance like *To Kill a Mockingbird*.¹⁵ Sacramento City Unified School District is segregating students into racial affinity groups, saying that, “[i]n a Racial Affinity Group, we use separation to more deeply understand [our racially divided] conditioning.”¹⁶ San Diego Unified School district hired a trainer, for a teacher-training program, who believes that American public schools are culpable for the “[a]nti-Black state violence” that she describes as “spirit murdering of Black children.”¹⁷

Parents, students, and teachers across America—in both public and private schools, in both liberal and conservative households—are dismayed by the results of this type of instruction. A STEM teacher in Brooklyn said that, after a history class taught a unit on Beyoncé, students told him that they felt compelled to say that they loved Beyoncé’s music even when they personally did not.¹⁸ “I thought: they aren’t even entitled to their own musical preferences,” the teacher said. “What does it mean when you can’t even tell the truth about how music affects you?”¹⁹ In another case, a young white student came home and shared what her teachers had taught her: “All people with lighter skin don’t like people with darker skin and are mean to them.” The father was horrified and had to tell his daughter, “that’s not how we feel in this family.”²⁰

¹⁴ <https://www.opensocietyfoundations.org/grants/new-executives-fund?past=1>.

¹⁵ See Bari Weiss, *The Miseducation of America’s Elites*, City Journal (Mar. 9, 201), <https://www.city-journal.org/the-miseducation-of-americas-elites>.

¹⁶ Sac. City Unified Sch. Dist., *Anti-Racist Classroom*, <https://sites.google.com/scusd.edu/antiracistclassroom/reflect/groups?authuser=0>.

¹⁷ See Christopher F. Rufo, *Radicalism in the Classroom*, City Journal (Jan. 5, 2021), <https://www.city-journal.org/radicalism-in-san-diego-schools>; see also Bettina Love, *Anti-Black state violence, classroom edition: The spirit murdering of Black children*, J. of Curriculum & Pedagogy, 2016, at 22–25, <https://bettinalove.com/wp-content/uploads/2018/09/Anti-Black-state-violence-classroom-edition-The-spirit-murdering-of-Black-children.pdf>.

¹⁸ Weiss, *The Miseducation*.

¹⁹ *Id.*

²⁰ *Id.*

Because the Justice Department has an active role in overseeing civil rights in K–12 schools, you will have oversight over related issues if you are confirmed.

- a. Do you support racially segregating students in public schools for any reason?
- b. Do you believe that students in public schools should feel safe holding their own personal views, including views that differ from “critical race theory”?
- c. Do you believe that parents should have an effective voice in whatever ideologies public schools teach their children?
- d. Do you believe that public-school teachers who do not agree with critical theory should be protected from retaliation for their views?
- e. Do you believe it is appropriate for civil-rights training sessions, in public schools, to extend the discussion of “murder” beyond the homicide realm and into the spirit realm?

RESPONSE: I share your interest in ensuring that schools are safe, non-hostile learning environments that promote tolerance for all students. If confirmed, I look forward to working with the Civil Rights Division, other components, and other agencies to determine how they can best use their authorities to accomplish that goal.

79. When the Justice Department was being built during the Great Depression, the Treasury Section of Fine Arts commissioned artists to create 68 murals for its halls, depicting scenes, figures and subjects “cover[ing] everything from Rome and the Bible to medieval Europe to English common law and the U.S. Constitution.”²¹ In a January 5, 2009, NPR article, a Justice Department tour guide explained that “we drip symbolism in this building. This building is a sermon, a hymn to justice.”²² The article described the murals as “real art on the walls, showing America at its worst, and the redemptive power of law and justice.”²³ Do you agree that this public art is important and ought to be maintained and displayed where it is?

RESPONSE: Anyone who has had the privilege of working in the Robert F. Kennedy building cannot help but be awestruck by its remarkable architecture and artwork. If confirmed, I welcome the opportunity to appreciate these great works of public art again.

80. By tradition component heads in the Justice Department can select official portraits of former Attorneys General for their office suites. As one of the first Senate-confirmed members of Justice Department leadership and as third-ranking officer in the agency, you would have an early choice in the matter. Assuming that Attorney General Garland has already taken Ed Levi and Robert Kennedy and that Deputy Attorney General Monaco will take Janet Reno, whose Attorney General portraits do you think you will choose for the Associate’s suite?

²¹ The Living New Deal, *Kennedy Department of Justice: Robinson Murals – Washington D.C.*, <https://livingnewdeal.org/projects/department-justice-boardman-robinson-murals-washington-dc/>.

²² Ari Shapiro, *Murals Depict Power of Law and Justice*, NPR (Jan. 5, 2009), <https://www.npr.org/templates/story/story.php?storyId=98783331/>.

²³ *Id.*

RESPONSE: I have immense respect for the Department of Justice and the position of Attorney General. Only one agency in our federal government bears the name of a value—justice. The Department carries a unique charge and North Star as the sacred keeper of the promise of equal justice under the law. If confirmed, I would make such a selection thoughtfully and in honor of the Department leadership that came before me.

81. Is threatening Supreme Court Justices right or wrong?

RESPONSE: Under 18 U.S.C. § 115, it is a crime to threaten to assault, kidnap, or murder any United States judge.

82. In many western States, water conservation and, in particular, water use are important aspects of economic growth. A big part of that is the settlement of tribal claims to water rights. These settlements are preferable to litigation and can create certainty as to water supply on reservations and partnerships that allow for economic development among non-tribal water users. The Indian Resources Section of the Environment and Natural Resources Division plays a role in these settlements.

- a. As Associate Attorney General, will you allow the Indian Resources Section to continue to pursue Indian water rights settlements?
- b. As Associate Attorney General, will you approve them?

RESPONSE: If confirmed, I would approach matters involving the Environment and Natural Resources Division by working with the career lawyers in the Division to seek to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

83. Do you agree that federal environmental rules under statutes like CERCLA should minimize their preemptive effects on effective state environmental regulation regimes?

RESPONSE: If confirmed, I would approach matters involving CERCLA preemption the same as I would any matter, by working with Department leadership and career lawyers to seek to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

84. President Biden has said he wants to change the name of the Environmental and Natural Resources Division to the “Environmental Justice and Natural Resources Division.”²⁴

- a. Do you agree with this change?
- b. If so, in a future Republican administration would you agree with a future Republican Attorney General changing the name of other Justice Department components to better reflect her ideological priorities—such as the Civil and Natural Rights Division or the Tax Reform Division?

²⁴ Ellen M. Gilmer, *Biden Bolsters DOJ Focus on Environmental Justice, Climate*, Bloomberg Law (Jan. 27, 2021), <https://news.bloomberglaw.com/environment-and-energy/biden-bolsters-doj-focus-on-environmental-justice-climate>.

- c. Is changing component names to comply better with partisan ideological objectives consistent with Attorney General Garland and your professed desire to depoliticize the Department of Justice?

RESPONSE: I am aware that President Biden has issued an Executive Order directing the Justice Department to consider changing the name of the Environmental and Natural Resources Division. If confirmed, I will work Attorney General Garland, other Department leaders, and the career lawyers in the Division to carefully consider the matter and the arguments on both sides.

85. You frequently criticized President Trump for a supposed lack of diversity in his judicial nominations. Yet you also tweeted of one nominee, “Patrick Bumatay is a conservative ideologue who served as a political operative in the Trump Justice Department – carrying out some of the most extreme anti-civil rights policies of this administration. It’s no surprise Trump wants him to serve FOR LIFE on the 9th Circuit.”²⁵ Judge Bumatay is the first Filipino-American federal appellate judge and the first openly gay judge on a regional court of appeals. How do you reconcile your advocacy for a diverse bench with your opposition to Patrick Bumatay’s historic nomination?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

86. Given your opposition to Judge Bumatay, do you agree that it’s reasonable for liberals or conservatives to prioritize jurisprudence over personal characteristics in judicial selection?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

²⁵ Tweet on Dec. 8, 2019, available at: <https://twitter.com/vanitaguptaCR/status/1203844482124406784>.

87. Given your opposition to Judge Bumatay, do you agree that it's possible to oppose diverse nominees without opposing them *because of* their diverse personal characteristics?

RESPONSE: Yes. When the Leadership Conference opposed a judicial nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights.

88. When you submitted your Senate Judiciary Questionnaire, you failed to include many responsive items to Question 12. This included every article relating to your time in college. I think it's fair to say that some would describe these articles as controversial. Now, I have no doubt that this was an oversight on your part. The questionnaire asks you to bring together a lot of information quickly and the Internet in many ways only makes this harder.

Unfortunately you have not been eager to extend that kind of understanding on questionnaire omissions to others. When a judicial nominee, Ken Lee, failed to disclose only some of his college writings you wrote that he "concealed" them. You also said that his "failure to turn over controversial writings" justified Senators opposing him.²⁶

- a. Having failed to disclose *any* of your own controversial college writings, do you regret saying that Judge Lee acted in bad faith in failing to disclose some of them?
- b. Do you still think that failure to disclose such documents is grounds for opposition?

RESPONSE: In preparing my Senate Judiciary Questionnaire, I undertook extensive efforts to locate and produce all responsive materials to the Committee. Any omissions were inadvertent and were promptly corrected.

89. As I mentioned at your hearing, a group called Defending Democracy Together has taken out over a million dollars in ads supporting your confirmation. According to public reports, Defending Democracy Together—while generally a "dark money" operation—receives significant support from the founder of eBay, the Silicon Valley Community Foundation, and the tech-connected dark-money umbrella Arabella. You told me in response to my questions about this that, yes, "technology companies, executives, or foundations" were donors to the Leadership Conference and you promised to follow up with me about it.

Please provide the Committee with a list of any technology companies, executives, or affiliated foundations that have donated to the Leadership Conference along with the: (1) date(s) of the donations; (2) the amount; and (3) the stated purpose for the donation, if any.

RESPONSE: From 2017 through 2020, the Leadership Conference received donations from Google and Microsoft. Google provided \$150,000 and Microsoft provided \$750,000 to the Leadership Conference on Civil and Human Rights. Between 2017-2020, Google

²⁶ Available at <https://civilrights.org/resource/oppose-the-confirmation-of-kenneth-lee-to-the-u-s-court-of-appeals-for-the-ninth-circuit/>.

donated \$3,051,500 to the Leadership Conference Education Fund (\$3,000,000 was for the organization's police-community trust initiative), and Microsoft donated \$126,396.45 to the Leadership Conference Education Fund.

90. As part of Defending Democracy Together's million-dollar ad purchase in support of your nomination, *Politico's* Transition Playbook email on Friday, March 5, 2021, touted no fewer than three ads in support of your nomination. Given the support you have received from progressive advocacy groups, do you think it's inappropriate for you to have been opposed by conservative advocacy groups, such as the Judicial Crisis Network?

RESPONSE: Freedom of speech is enshrined in the Constitution's First Amendment. If I am confirmed as Associate Attorney General, I will be committed to upholding the First Amendment's strong protections for all Americans.

91. Committee Democrats have condemned the Judicial Crisis Network ads against you as falsely accusing you of wanting to defund the police.

- a. Who decides whether or not those ads are "false"?
- b. Do you think that tech companies should refuse to air them as misinformation?

RESPONSE: Freedom of speech is enshrined in the Constitution's First Amendment. I do not support defunding the police. I have worked collaboratively with law enforcement throughout my career, which is why my nomination is supported by so many major law enforcement organizations.

92. Do you think the number of monopolies in the American economy has increased? What companies do you believe to be monopolies?

RESPONSE: It is hard to answer that question in the abstract. Whether a company is a monopolist is a complex question requiring detailed factual and legal analysis, as is the question of whether a monopolist has violated the antitrust laws. Where concentration of market power results in abusive practices in violation of our anti-trust laws, the Justice Department should use the tools at its disposal to address these problems. If I am confirmed, I will work with the Antitrust Division to vigorously enforce the antitrust laws.

93. What principles besides economic efficiency should serve as the foundation for our nation's antitrust laws?

RESPONSE: The antitrust laws demand free, fair, and competitive markets, not just low prices. I am committed to protecting competition for all Americans and ensuring the antitrust laws work for everyone, including small businesses and workers.

94. Is it appropriate to add broader social objectives to the goals of antitrust, such as full employment or equitable distribution of wealth?

RESPONSE: Strong antitrust enforcement must be anchored by the rule of law. The antitrust laws demand free, fair and competitive markets, not just low prices. If confirmed, it will be my direction that our antitrust laws be used to effectively promote market competition. I do not have a preconceived notion of how best to achieve that goal.

95. On May 13, 2019, you penned a letter to senators urging them to oppose nominees who declined to state specifically whether *Brown v. Board of Education* was correctly decided. Your letter claimed that “the refusal by some nominees to say that the decision was correctly decided sends a dangerous signal to all Americans – especially African Americans – that *Brown* could someday be overturned and that our nation could return to the disgraceful days of racial segregation.”²⁷

Senators had been asking nominees about whether they thought *Brown* was correctly decided for over a year before your letter—typically in conjunction with whether they also thought *Roe v. Wade* was correctly decided. Starting around the time of your letter, however, the *Roe* follow-up disappeared while the focus on *Brown* intensified.

- a. Before or after you wrote that letter, did you or your staff coordinate with any Senators or Senate staff about how to approach *Brown*?
- b. Did you or your staff recommend to any Senators or Senate staff that they focus on *Brown* and ignore *Roe*?

RESPONSE: No. The Leadership Conference did not coordinate with staff about asking about this at all or how Senators should approach the question.

96. Do you think the most natural inference from a nominee refusing to answer whether any Supreme Court case—including *Brown*—was correctly decided is that they are sending a signal that *Brown* could be overturned? To what other cases does this principle apply?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

97. During your hearing you urged senators to look at your entire record, and not just individual statements you made. For the 27 judicial nominees you included in your May 13, 2019 letter, what information from their entire record did you use to inform your decision that they were open to overturning *Brown*?

²⁷ Available at <https://civilrights.org/resource/oppose-the-confirmation-of-judicial-nominees-who-decline-to-state-brown-v-board-of-education-decision-was-correctly-decided/>.

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration's judicial nominees. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees.

98. Two of the nominees in your May 13, 2019 letter were nominated to serve on the U.S. Court of Federal Claims. How could judges on the Court of Federal Claims credibly signal an intent to overturn *Brown* given its status as a limited-jurisdiction Article I court?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration's judicial nominees. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees.

99. You can answer the following questions yes or no:
- a. Was *Brown v. Board of Education* correctly decided?
 - b. Was *Loving v. Virginia* correctly decided?
 - c. Was *Griswold v. Connecticut* correctly decided?
 - d. Was *Roe v. Wade* correctly decided?
 - e. Was *Planned Parenthood v. Casey* correctly decided?
 - f. Was *Gonzales v. Carhart* correctly decided?
 - g. Was *District of Columbia v. Heller* correctly decided?
 - h. Was *McDonald v. City of Chicago* correctly decided?
 - i. Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?
 - j. Was *Sturgeon v. Frost* correctly decided?
 - k. Was *Juliana v. United States* (9th Cir.) correctly decided?
 - l. Was *Rust v. Sullivan* correctly decided?

RESPONSE: If confirmed as a Department of Justice official, I will seek to ensure that the Department follows Supreme Court precedent as the law of the land.

100. Will the litigating components under your authority defend the constitutionality of the Religious Freedom Restoration Act in court?

RESPONSE: I understand that the Department of Justice’s longstanding practice is to defend the constitutionality of laws passed by Congress so long as there is a reasonable argument to be made that the law is constitutional, and so long as the law does not violate the separation of powers by infringing on executive authority. If confirmed, I will uphold that traditional practice for all laws, including the Religious Freedom of Restoration Act.

101. The Justice Department often plays a role in judicial selection.
- a. What role do you see yourself playing in that process?
 - b. What role do you see Senate consultation playing in that process?
 - c. Will you require nominees to pass case-specific “litmus tests”?

RESPONSE: It is my understanding that the Department of Justice traditionally plays a role in advising the President on the selection of judicial nominees, including vetting of potential nominees by the Department’s Office of Legal Policy. If I am confirmed, I would follow the Attorney General’s lead with respect to my role in any judicial selections.

102. Liberal litigation groups like Democracy Forward have brought FOIA suits against the Justice Department seeking communications between Office of Legal Policy attorneys and certain judicial nominees.
- a. Did you, your staff, or anyone else associated with the Leadership Conference play any role in this or related litigation against the Justice Department seeking communications with judicial nominees?

RESPONSE: To the best of my knowledge, LCCHR was not involved in any litigation or FOIA requests on this issue.

- b. Do you agree with Democracy Forward that communications between Justice Department attorneys and judicial nominees should be disclosed under FOIA?

RESPONSE: I believe transparency and timely responses to FOIA requests are important functions for the Department of Justice, as for any other agency. If confirmed, I will work closely with the career officials in the Office of Information Policy to ensure timeliness and transparency in FOIA responses and that the Justice Department is complying with its legal obligations under FOIA.

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

RESPONSE: In early December 2020, I was called asking if I would agree to be vetted for a position at Department of Justice. I learned of the exact position I was being vetted for a couple of weeks later. President-elect Biden officially presented the offer to me in early 2021. The President-elect publicly announced his intent to nominate me on January 7, 2021, and formally sent that nomination to Congress on January 20, 2021.

104. Please explain, with particularity, the process whereby you answered these questions.

RESPONSE: The Department of Justice received these questions on March 12, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on March 17, 2021.

Questions for the Record

For Vanita Gupta, Nominee to be Associate Attorney General

Submitted by Senator Lindsey O. Graham

1. Four months ago, in December 2020, you tweeted “[a]bolish the death penalty.” During your confirmation hearing, you stated that Dylann Roof—the domestic terrorist and white supremacist who murdered nine African-American parishioners in Charleston, SC—received the death penalty “under [your] watch.”
 - a. If confirmed, do you intend to advocate to follow through and ensure that Roof is actually executed?

RESPONSE: If I am confirmed as Associate Attorney General, I will enforce the law. The decision to pursue the death penalty requires the certification of the Attorney General and there’s an extensive process at the Justice Department—one that I’m familiar with given my prior service at the Civil Rights Division. If confirmed, as I did before, I will look at every case individually on the facts and the law.

2. Did you at any point oppose the death penalty for Dylann Roof? Did you at any point author a memorandum or other document or communication expressing opposition to the death penalty for Dylann Roof? If you believe you can only partially answer this question because of a privilege, please explain why it is fair for you to say that the Roof death penalty was obtained “under [your] watch,” but not fully explain your role in obtaining that penalty.
 - a. If you opposed the death penalty for Dylann Roof, do you believe it is fair to say that Roof received the death penalty “under [your] watch?”

RESPONSE: Justice Department deliberations are confidential and it would not be appropriate for me to discuss internal deliberations in connection with this or any other matter I worked on during my prior government service.

3. Your signature, along with the then-US Attorney for South Carolina, appears on the indictment of Dylann Roof. The indictment lists aggravating factors in his case: premeditation, vulnerable victims, and multiple killings. Interestingly, the indictment you signed did not list as an aggravator terrorism—expressly available as an aggravating factor under 18 U.S.C. 3592 (c) (9).
 - a. Roof authored racist manuscripts, targeted Mother Emanuel because it serves African Americans, and intended to incite a race war. Why do you not believe Roof is a domestic terrorist?
 - b. If you now believe Roof is a domestic terrorist, why didn’t you include terrorism as an aggravating factor in the indictment?

RESPONSE: Justice Department deliberations are confidential and it would not be appropriate for me to discuss internal deliberations in connection with this or any other matter I worked on during my prior government service.

Senator John Cornyn
Questions for the Record
Vanita Gupta, Nominee for Associate Attorney General of United States

1. In a September 2012 op-ed, you wrote that “[s]tates should decriminalize simple possession of all drugs, particularly marijuana, and for small amounts of other drugs.”
 - a. Did you make this statement?
 - b. Would “all drugs” include methamphetamine and heroin?
 - c. You claimed that your thinking has “evolved” on the decriminalization of drugs. Please describe when this happened and what contributed to your evolution.
 - d. Do you think it is reckless to communicate to the public—through a 2012 op-ed—that possessing and using methamphetamine should be legal?
 - e. What research, books, studies, and other material did you rely on before concluding that “all drugs” should be legal?
 - f. If someone were to come out today and say that we should decriminalize heroin, what would you tell them based on how your thinking has “evolved” on the subject?
 - g. If a high school student were to hear that a public official advocates for decriminalizing crystal meth, what effect might that have on that high school student’s views towards that dangerous drug?
 - h. If you are representing an organization that advocates for decriminalizing crystal meth and heroin, do you have an ethical obligation to think about the wider impact your representation would have on the views of America’s youth towards drugs? Please provide an in-depth response to this question.
 - i. Please describe for this Committee why you felt that it was ethically responsible to advocate for the decriminalization of “all drugs”?
 - j. Do you wish that you could take back your advocacy on this issue on behalf of the ACLU, your employer at the time?

RESPONSE: I have never advocated for the decriminalization of all drugs, and I do not support the decriminalization of all drugs. In 2012, I coauthored an article that advocated for states to decriminalize and defelonize simple possession “of all drugs, particularly marijuana, and for small amounts of other drugs.” The article discussed how arrest and incarceration do not treat addiction and often make individuals more prone to drug use, and it advocated for alternatives to incarceration to treat addiction. While my position on

these issues has evolved, because of my experience working at the Department of Justice and an experience with addiction in my own family, I have never communicated or believed that all drugs should be legal.

Substance use disorder is both a public health problem and a law enforcement problem. President Biden has supported decriminalization of marijuana and ending incarceration for drug use, and I support these policies. If confirmed as Associate Attorney General, I will enforce all federal laws, and I will work with the Attorney General and Deputy Attorney General to protect communities from the harmful effects of drugs.

2. Since making your 2012 comments on the legalization of “all drugs,” please describe any and all actions that you’ve taken to fight the opioid epidemic, including, but not limited to, charitable donations, public advocacy and/or published writings.

RESPONSE: I have never advocated for the legalization or decriminalization of all drugs, and I do not support the legalization or decriminalization of all drugs. Throughout my career I have worked alongside career attorneys at the Department of Justice and alongside advocates to shed light on and fight the opioid epidemic. This has included promoting a public health approach to combatting addiction and ensuring that law enforcement, states and cities have the resources they need to address this crisis. I have also advocated for expansive access to treatment for opioid use disorder, alternatives to highly addictive opioid pain treatment, drug abuse education, and comprehensive treatment programs.

3. Do you currently advocate or support decriminalization of marijuana possession? Please explain your position.

RESPONSE: President Biden has stated his support for the decriminalization of marijuana use. The role of the Justice Department is to enforce the law, and if confirmed as Associate Attorney General, I would follow and enforce the law.

4. Should possession of methamphetamine be legal?

RESPONSE: No, and it is not. The role of the Justice Department is to enforce the law, and if confirmed as Associate Attorney General, I would follow and enforce the law.

5. Should possession of heroin be legal?

RESPONSE: No, and it is not. The role of the Justice Department is to enforce the law, and if confirmed as Associate Attorney General, I would follow and enforce the law.

6. Should possession of cocaine be legal?

RESPONSE: No, and it is not. The role of the Justice Department is to enforce the law, and if confirmed as Associate Attorney General, I would follow and enforce the law.

7. Should possession of fentanyl be legal?

RESPONSE: No, and it is not. The role of the Justice Department is to enforce the law, and if confirmed as Associate Attorney General, I would follow and enforce the law.

8. Should possession of bath salts be legal?

RESPONSE: No, and methylenedioxypropylamphetamine (MDPV) and mephedrone are not legal. The role of the Justice Department is to enforce the law, and if confirmed as Associate Attorney General, I would follow and enforce the law.

9. Should diversion of prescription drugs be a federal crime?

RESPONSE: Yes, and it is. The role of the Justice Department is to enforce the law, and if confirmed as Associate Attorney General, I would follow and enforce the law.

10. Attorney General Eric Holder issued a memorandum in August 12, 2013, on the use of mandatory minimum sentences in “certain drug cases.” In that memorandum, he asserts that mandatory minimum sentences should not be utilized for “certain nonviolent, low-level drug offenders.”

- a. At the time it was issued, did you agree with that policy?
- b. What do you think constitutes a “nonviolent, low-level drug offender”?
- c. Does the presence of a firearm at a stash house make the drug-dealing offense violent? If not, please explain.
- d. Under the Holder memorandum, does a documented gang member still qualify as a “nonviolent offender”?

RESPONSE: I, like Attorney General Garland, believe that we should give discretion to our federal prosecutors to make the charge fit the crime and be proportional to the damage that it does to our society. President Biden has also supported the elimination of mandatory minimums in order to provide discretion to trial judges so they are able to do justice in individual cases.

11. Do you believe that drug-dealing is connected directly or indirectly to violence? Please be specific in your response.

RESPONSE: Yes, some drug-dealing activity is linked to violence and dangerous criminal enterprises. As Attorney General Garland noted in his testimony, the Department will focus resources on dangerous criminal enterprises. If confirmed as Associate Attorney General, I will enforce all federal laws, and I will work with the Attorney General and Deputy Attorney General to protect American communities from the harmful effects caused by criminal drug enterprises.

12. In 2012, what was your belief as to whether drug-dealing of methamphetamine and heroin was connected directly or indirectly to violence?

- a. If your belief has “evolved” since 2012, when did this happen?
- b. If your belief has “evolved” since 2012, what were the contributing factors?

RESPONSE: I have never advocated for the decriminalization of all drugs, and I do not support the decriminalization of all drugs. In 2012, I coauthored an article that advocated for states to decriminalize and defelonize simple possession “of all drugs, particularly marijuana, and for small amounts of other drugs.” The article discussed how arrest and incarceration do not treat addiction and often make individuals more prone to drug use, and it advocated for alternatives to incarceration to treat addiction. While my position on these issues has evolved, because of my experience working at the Department of Justice and an experience with addiction in my own family, I have never communicated or believed that all drugs should be legal.

Substance use disorder is both a public health problem and a law enforcement problem. President Biden has supported decriminalization of marijuana and ending incarceration for drug use, and I support these policies. If confirmed as Associate Attorney General, I will enforce all federal laws, and I will work with the Attorney General and Deputy Attorney General to protect communities from the harmful effects of drugs.

13. Attorney General Eric Holder stated that if a defendant meets four factors, prosecutors should “decline to charge the quantity necessary to trigger a mandatory minimum sentence.” One of the factors weighing against charging a mandatory minimum drug crime is when a defendant does not have “significant ties to large-scale drug trafficking organizations, gangs, or cartels.”

- a. What do you believe constitutes “significant ties” to a DTO, gang, or cartel?
- b. If methamphetamine was transported into the United States by a Mexican drug cartel, and someone then chooses to deal kilograms of that substance further down the supply chain, doesn’t that person have “significant ties” to the cartel? If not, please explain.

RESPONSE: If confirmed, federal criminal prosecution of this type of matter would not be within my direct purview.

14. Attorney General Eric Holder further said that when deciding whether to charge a mandatory minimum drug charge based on drug quantity, prosecutors should also consider whether a “defendant does not have a significant criminal history”? He continued: “A significant criminal history will normally be evidenced by three or more criminal history points but may involve fewer or greater depending on the nature of any prior conviction.”

- a. What type of “criminal history points” would you give more weight to that

would tip the scales to make someone being deemed as having a “significant criminal history”?

- b. Do you believe that an illegal reentry conviction is a prior conviction that is dangerous?
- c. Should a conviction for illegal reentry tip the scales more towards someone being deemed to have a “significant criminal history”?
- d. Do you believe a conviction for possessing a firearm illegally is a prior conviction that is dangerous?
- e. Should a conviction for illegal possession of a firearm tip the scales more towards someone being deemed to have a “significant criminal history”?
- f. Do you believe that a conviction for driving under the influence is a prior conviction that is dangerous?

RESPONSE: If confirmed, federal criminal prosecution of this type of matter would not be within my direct purview.

15. Is there an amount of methamphetamine or heroin that someone deals that would warrant charging a mandatory minimum drug offense irrespective of any of Attorney General Holder’s four factors?

- a. If a college freshman, who has a sterling academic record and no prior criminal history points, is dealing over fifty kilograms of heroin to his fellow classmates, should that person be given a pass on a mandatory minimum drug charge?

RESPONSE: If confirmed, while oversight for federal criminal prosecutions will reside with the Attorney General and the Deputy Attorney General, I will insist that the Department’s decisions in all enforcement matters are based solely on an evenhanded application of the law to the facts.

16. Do you have any hesitations about bringing criminal charges against someone for dealing marijuana, which is a federal crime? Please explain your position.

RESPONSE: As Attorney General Garland noted in his testimony, it is important to focus our attention on violent crimes and other crimes that greatly endanger our society. Large-scale illicit drug trafficking should be distinguished from simple marijuana possession and should be vigorously investigated and prosecuted. The role of the Justice Department is to enforce the law, and if confirmed as Associate Attorney General, I would follow the law.

17. Do you have any hesitations about identifying violations of federal marijuana laws in order to obtain search warrants? Please explain your position.

RESPONSE: If confirmed, I will faithfully uphold the Constitution and insist the Department follows and enforces federal laws.

18. Ms. Gupta, you have personally attacked a number of federal judges appointed under President Trump. For example, you Tweeted that Justice Kavanaugh had “lied” to the Judiciary Committee, and “[h]e showed himself to be a partisan. . .”
- a. Did you make this statement?
 - b. Which statement(s) of Justice Kavanaugh were you referring to in which you claim he “lied”?
 - c. Were you aware when you made this accusation, that lying under oath to the Judiciary Committee was a federal crime?
 - d. How many followers of your Twitter did you have at the time that you made this statement? Please provide your best estimate.
 - e. What evidence did you consider before you made this statement?
 - f. Did you consider the testimony of others in support of Justice Kavanaugh before you claimed he “lied” under oath to the Judiciary Committee?
 - g. Was there any testimony that you considered to be “exculpatory” against your accusation that a sitting federal judge had lied to the Judiciary Committee?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

19. Do you stand by your statement today that Justice Kavanaugh “lied” to the Judiciary Committee?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

20. During his confirmation hearing, then Judge Kavanaugh stated that he “categorically and unequivocally den[ied] the allegation against me by Dr. Ford.”
- a. What weight, if any, did you give this categorical denial?
 - b. Given your statements on what you perceive to be then Judge Kavanaugh’s veracity, why did you discredit this categorical denial of

the accusation?

- c. In our system of justice, what weight should prosecutors give in considering exculpatory statements made under oath by individuals accused of wrongdoing?
- d. Before accusing someone of a federal crime, do you believe it is necessary to consider and weigh all of the exculpatory evidence in favor of the accused?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

- 21. As you look back on your public statements made about Justice Kavanaugh, do you believe that you exhibited the highest ideals of the DOJ?

RESPONSE: I have tremendous respect for the Supreme Court and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body and, deserves the respect afforded all lifetime appointees to the federal bench.

- 22. Do the ideals that you try to live out in your daily life depend on whether you fall under the umbrella of the DOJ?

RESPONSE: No.

- 23. Were you speaking for yourself at that time or a third-party organization when you accused then Judge Kavanaugh of committing a crime?

RESPONSE: I did not intend to accuse him of committing a crime. I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

- 24. Given you accused Justice Kavanaugh of committing crimes, including lying under oath, can you commit to recusing yourself from any involvement at all in any litigation before the Supreme Court?

RESPONSE: If confirmed, I will consult the Department of Justice's career ethics officials about recusal issues and make decisions based on the facts, the law, and the applicable rules, policies, and practices.

- 25. With respect to all of the other disparaging comments you have made regarding federal judges, can you commit to me to do an inventory of all of your Tweets and public comments regarding those federal judges as well?

- a. Can you further commit to me that you will present those documents to the professional responsibility and ethics office at DOJ to get an advisory opinion if it would be appropriate for you to continue to supervise any litigation or matters in front of those judges you have publicly disparaged?

RESPONSE: I have tremendous respect for judges and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees. If I am confirmed, I will consult about recusal issues with the Department of Justice's career ethics officials, for whom I have enormous respect.

26. What is your belief as to whether exculpatory evidence should be presented to the grand jury when seeking an indictment? Please be specific.

RESPONSE: If confirmed, I will faithfully uphold the Constitution and insist the Department follows and enforces federal laws.

27. What is your belief as to whether exculpatory evidence should be included within applications for warrants? Please be specific.

RESPONSE: If confirmed, I will faithfully uphold the Constitution and insist the Department follows and enforces federal laws.

28. During your testimony before the Judiciary Committee, you indicated that you would provide an itemized list of all the assets in trusts that are controlled by you, either directly or indirectly. Please provide an itemized list on the following trusts:

- a. 2008 Family Trust: value of over \$16 million.
b. 2014 Gupta Family Trust: value of over \$14 million.

RESPONSE: See Attachment A.

29. How much of your wealth, directly or indirectly, has derived from Avantor Inc.?

RESPONSE: Per my ethics agreement, signed March 2, 2021, I have committed to recusing myself from any matters relating to Avantor. As I stated at my confirmation hearing, I will, if confirmed, divest from all individual stocks I control, including Avantor. The Trustee of the 2008 and 2014 Trusts intends to divest both Trusts of any Avantor stock as soon as possible, which will occur during the next "open window" period, which is expected to begin on April 30, 2021. I will continue to consult with and seek the guidance

of Department ethics officials in connection with all of my holdings.

Currently, approximately \$5.1 million of the assets I control are derived from Avantor. Approximately \$7.8 million of the assets in the 2008 Trust, which I do not control, are derived from Avantor. Approximately \$5.3 million of the assets in the 2014 Trust, which I do not control, are derived from Avantor. (These figures are as of close of business on March 16, 2021.)

30. Did you financially benefit when Avantor Inc. (“Avantor”) went public with an initial public offering in May of 2019.

RESPONSE: I did not own Avantor stock at the time of the initial public offering. The value of the Avantor assets that were held in the 2008 and 2014 Trusts increased.

31. Bloomberg Businessweek reported that “Avantor has cultivated a remarkable line of business: selling acetic anhydride across Mexico in containers that are big enough to make lucrative quantities of illegal narcotics but small enough to loan into the truck of a car.” According to the article, Avantor sold acetic anhydride to Mexican drug cartels, who then used the chemical to make heroin and methamphetamine.

a. Are you aware that Avantor had been accused of selling chemicals to Mexican drug cartels?

RESPONSE: I am now aware of the allegations.

b. If so, when is the first time that you learned that it was alleged that Avantor had sold chemicals to Mexican drug cartels?

RESPONSE: I first became aware of the allegations on March 10, 2021, when Fox Business reported on the Bloomberg investigation.

ii. Upon learning that Avantor had potentially sold chemicals to Mexican drug cartels, how, if at all, did your investment strategy change?

RESPONSE: Since learning of the allegations, I have not made any changes to my investments. Per my ethics agreement, signed March 2, 2021, I had already committed to recusing myself from any matters relating to Avantor, and as I stated at my confirmation hearing on March 9, 2021, I will, if confirmed, divest from all individual stocks I control, including Avantor. In addition, the Trustee of the 2008 and 2014 Trusts intends to divest both Trusts of any Avantor stock as soon as possible, which will occur during the next “open window” period, which is expected to begin on April 30, 2021

iii. Since learning that Avantor had potentially sold chemicals to Mexican drug cartels, how much money have you contributed to trust funds under your direct or indirect control?

RESPONSE: I have made no contributions to any trust funds since learning of these allegations.

32. In June 2020, you testified that “it is also critical for state and local leaders to heed calls . . . to decrease police budgets and the scope, role, and responsibility of police in our lives.”

- a. Do you agree that when you advocated to “decrease police budgets,” it could be interpreted to mean “defund the police”? Please explain the distinction.
- b. What effect, if any, do you see this type of rhetoric having on state and local police if you were to become the Associate Attorney General?
- c. Have you ever advocated for public measures to shift resources away from state and local police?

RESPONSE: I do not support defunding the police. Throughout my career, I have supported law enforcement, working collaboratively with law enforcement leaders and advocating for more funding for the police where appropriate, including for officer wellness and safety programs, body-worn cameras, and equipment and data systems upgrades. Based on feedback from law enforcement and other stakeholders, in discussions over many years, I have supported community-based interventions for people with mental illness or substance use disorders, for example, to relieve the burden on law enforcement and to provide alternatives that can keep officers and community members safe. During my time leading the Civil Rights Division I testified before the Senate in support of additional funding for law enforcement funding programs.

I am proud that my nomination has been supported by major law enforcement organizations, including the National Fraternal Order of Police, the National Sheriffs’ Association, Major County Sheriffs of America, the Major Cities Chiefs Association, the International Association of Chiefs of Police, the Police Executive Research Forum, the Federal Law Enforcement Officers Association, the National Organization of Black Law Enforcement Executives, the Hispanic American Police Command Officers Association, and the National Association of Women Law Enforcement Executives.

33. If confirmed, you will be overseeing the COPS portfolio at the DOJ. One of the programs under COPS is the Anti-Heroin Task Force Program.

- a. If confirmed, can you commit to supporting the Anti-Heroin Task Force Program?
- b. What role do you see drug task forces playing in local communities to fight drug crimes?
- c. Do you intend to make any changes to the way that the Anti-Heroin Task Force Program is currently operated?

- d. Can you commit to me that you will publish in a memorandum any changes that you make to the Anti-Heroin Task Force Program and any other drug task force under your charge?

RESPONSE: I agree that the COPS Office plays a critical role within the Justice Department, including through the grant programs it administers for the benefit of state and local law enforcement agencies. Law enforcement agencies know and trust the COPS Office to support their law enforcement needs. If confirmed, I will work to ensure the COPS Office funding is spent appropriately for the purposes it was intended.

34. As you know, the Obama Administration had instituted a policy where legal settlements between the DOJ and companies were used to fund third-party, special interest groups that were not parties to the litigation. This practice, often referred to as “slush fund settlements,” presents a myriad of legal, ethical, and constitutional concerns. In 2017, the Trump Administration forbade this practice; and last year, the DOJ incorporated this ban into the Justice Manual (85 FR 81409). President Biden recently announced that it is reviewing the ban on this practice. While you were at the DOJ, you wrote approvingly on the use of “slush fund settlements.”

- a. Do you think it is ever appropriate to divert DOJ settlement money from a general fund to a third party, who was not a party to the underlying litigation?
- b. Do you think the DOJ should be in the business of picking and choosing which organizations may or may not receive funding under a settlement agreement?
- c. What problems, if any, do you foresee if the slush fund practice is reinstated?
- d. While you were at DOJ, did you receive any opposition from legislators or watchdogs to the “slush fund settlement” program?
- e. Describe the nature of that opposition to the slush fund practice.

RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. I understand the importance of these guardrails and will comply with these regulations. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

35. Former President Clinton spokesman George Stephanopoulos said this about the National Rifle Association members: “Let me make one small vote for the NRA. They’re good citizens. They call their congressmen. They write. They vote. They contribute. And they get what they want over time.” The NRA is an important advocacy group that protects and defends the Second Amendment. You have referred to the NRA as an

“extremist advocacy organization.”

- a. Do you agree that you previously referred to the NRA as an “extremist advocacy organization”?
- b. Do you currently believe that the NRA is an “extremist advocacy organization”?
- c. If not, when did your thinking “evolve” on it no longer being considered, in your own words, an “extremist advocacy organization”?
- d. If confirmed, can you commit to me that you will recuse yourself from any lawsuit or action that involves the NRA or any other group that advocates for protections of the Second Amendment?
- e. If not, do you believe that your past statements regarding the NRA would, at the very least, cast a cloud over that litigation or action involving the NRA or groups advocating for the Second Amendment given your open hostility to those groups?

RESPONSE: If confirmed, I would bring no prejudgments about the National Rifle Association or any other organization to my duty to fully, fairly, and impartially enforce the law. My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment. If confirmed, I will consult the Department of Justice’s career ethics officials about recusal issues and make decisions based on the facts, the law, and the applicable rules, policies, and practices.

36. Ms. Gupta, have you ever charged or supervised a prosecution that involved 18 U.S.C. §1001, making a false statement?

RESPONSE: It is not uncommon for the Criminal Section of the Civil Rights Division to charge and prosecute a violation of 18 U.S.C. § 1001, along with other violations. Although I do not remember all of the cases that contained such charges during the time I led the Civil Rights Division, one example was a resentencing on March 2, 2015 in a matter involving sixteen people who committed crimes arising out of a series of assaults on practitioners of the Amish religion. A jury found the defendants guilty in 2012 following a lengthy trial. All of the defendants were found guilty of conspiracy to obstruct justice, three were also found guilty of concealing evidence, and one was convicted of concealing evidence and making false statements to federal investigators. The case was investigated by

the Cleveland Division of the FBI and was jointly prosecuted by the U.S. Attorney’s Office for the Northern District of Ohio and the Civil Rights Division.

37. Please identify all of the cases that you have charged or supervised in which the DOJ brought false statement charges against someone.

RESPONSE: Please see my response to Question 36.

38. Ms. Gupta, if you are confirmed as AAG, you will oversee enforcement actions and litigation involving technology companies. During your testimony, you indicated that some technology companies may have donated to the Leadership Conference on Civil and Human Rights.

- a. In the spirit of transparency, please provide an itemized list of every donation made by a technology company, directly or indirectly, to the Leadership Conference on Civil and Human Rights.

RESPONSE: From 2017 through 2020, the Leadership Conference received donations from Google and Microsoft. Google provided \$150,000 and Microsoft provided \$750,000 to the Leadership Conference on Civil and Human Rights. Between 2017-2020, Google donated \$3,051,500 to the Leadership Conference Education Fund (\$3,000,000 was for the organization’s police-community trust initiative), and Microsoft donated \$126,396.45 to the Leadership Conference Education Fund.

39. The Civil Rights Division lists factors that it considers “cases of national interest.” The Justice Manual states that a case of “national interest” is one that presents important “public policy considerations.”

- a. During your time at the Civil Rights Division, what did you understand that phrase—“public policy considerations”—to mean?
- b. Is it your belief that the “public policy considerations” derive from the President’s political agenda?
- c. What else informs whether a case presents important “public policy considerations”?
- d. Do you believe that protecting religious liberties presents a “national interest”?

RESPONSE: Under Section 8-3.130 of the Justice Manual, which applies to the investigation and prosecution of criminal civil rights violations, a case of national interest is one that “presents important public policy considerations; a case that presents a novel issue of law; a case that because of peculiar facts and circumstances may set important precedent; . . . a case that is urgent or sensitive; or a case that substantially affects the uniform application of the law. A case involving a violation of the federal criminal civil rights laws resulting in death is presumed to be a case of national interest.” The Assistant

Attorney General for the Civil Rights Division determines, after consulting with the United States Attorney, whether a case is of “national interest” for these purposes. If confirmed as Associate Attorney General, I would work with the Assistant Attorney General for Civil Rights, any relevant United States Attorney, and career staff experienced in prosecuting criminal civil rights violations to confer as appropriate regarding whether any particular case meets the definition in the Justice Manual.

**United States Senator Mike Lee
Questions for the Record**

**Vanita Gupta
Nominee, Associate Attorney General**

1. You have stated that you believe that "all of us are able to manage implicit bias but only if we can acknowledge our own." To be an effective associate attorney general, is it essential to manage your implicit bias?

RESPONSE: Yes.

2. Since you can only order it if you acknowledge it, do you acknowledge your own implicit bias?

RESPONSE: Yes.

3. From your past statements about other nominees before this body, it is evident that you believe a person's implicit bias can be inferred from written opinion, ideological positions, and testimony before congress. That being the case, would it be correct for us to infer from your written statements and opinions, your stated ideological positions, and your testimony before Congress you have an implicit bias against those who hold pro-life views?

RESPONSE: No.

4. What do you plan to do while in office to ensure that your own implicit biases do not color your judgment?

RESPONSE: President Biden issued an Executive Order directing federal agencies to conduct an internal review and devise plans to address unequal barriers to opportunity in agency policies and programs. If I am confirmed as Associate Attorney General, I will promptly undertake efforts to comply with President Biden's Executive Order, including by participating in any trainings and other programs mandated by the Department.

5. You testified, "we want to ensure that we have free speech and a free internet while understanding the responsibility that social media has in [] propagating and radicalizing terrorists online." In 2019 you tweeted: "Mark Zuckerberg Doesn't Know What the First Amendment is For. He thinks it's a floating right that carries no responsibilities." Does the First Amendment protect dissenting views even if they are views you consider hostile or dangerous?

RESPONSE: The protection of speech against government regulation is a fundamental value enshrined in the First Amendment. The Department of Justice is responsible for upholding all constitutional rights, including the right to freedom of speech. The protection of the First Amendment extends to speech that some may find offensive; indeed, the Supreme Court has "said time and again that "the public expression of ideas may not

be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017). **If confirmed, I will be committed to upholding the First Amendment’s strong protections for all Americans.**

6. You have testified that “I also believe that any type of viewpoint discrimination is anathema to this country.” You also testified that social media platforms “have community standards that they are not enforcing [] that are creating- a lot of problems around issues in our democracy.” If Facebook and Twitter use their community standards to unfairly censor one side of an issue, do you believe that creates problems in our Republic? Why or why not?

RESPONSE: Freedom of speech is enshrined in the Constitution’s First Amendment and protecting it by maintaining a strong marketplace of ideas is critical for preserving our democracy. Viewpoint discrimination is not permissible. Ensuring a strong marketplace of ideas can involve how to best address dangerous behavior that threatens that marketplace. At the Leadership Conference, I was proud to have worked alongside others to combat election disinformation to make it easier for all Americans to vote—regardless of political party.

7. You testified, “based on my prior engagements with tech companies, I would highly doubt that they would be excited necessarily about my confirmation. My role as a civil rights lawyer has been to push the tech companies very hard on any number of issues.” Is it more or less likely with your confirmation that Facebook and Twitter will feel emboldened to censor dissenting viewpoints?

RESPONSE: I cannot speculate on what effect, if any, my confirmation will have on decisions made by Facebook or Twitter. The Justice Department must defend the First Amendment with full vigor.

8. Facebook’s and Twitter’s censoring of less popular viewpoints on social media would not violate the First Amendment; however, do you think that such an increase in censorship would be detrimental to some of the underlying purposes of the First Amendment?

RESPONSE: Robust debate and the freedom of expression are cherished hallmarks of our democracy enshrined in the First Amendment. These companies, however, have adopted their own community standards to guard against certain misinformation and disinformation that is dangerous to our marketplace of ideas. I know that many Judiciary Committee Members have ideas about the applicable legal framework, and if confirmed, I will look forward to the hard work ahead, with you, to find consensus on these issues.

9. Would it violate the First Amendment for government officials to pressure these companies to increase censorship?

RESPONSE: Government officials, including those at the Department of Justice, are bound to enforce the First Amendment’s protections. Censorship and viewpoint discrimination are an anathema to our democracy.

10. In your confirmation hearing, you were asked if you had ever defended the speech of someone you disagreed with. You could not think of anyone. Can you think of anyone whose right to free speech you have publicly defended despite disagreeing with their message?

RESPONSE: While I was Deputy Legal Director of the ACLU, the organization defended the rights of anti-gay protestors to protest at the funerals of LGBTQ people. In the course of my work, I frequently had to defend the ACLU's participation in this case, even though I vehemently disagreed with the protestors' message and method of delivering it.

11. Do you think your rhetoric—both on twitter and elsewhere contributed to the violence that rocked our country last summer?

RESPONSE: No. I have never condoned violence. Violence is never appropriate. If I am confirmed as Associate Attorney General, it will be my mandate to enforce the laws and the Constitution of the United States, including laws penalizing acts of violence.

12. Has your rhetoric contributed to violence against law enforcement officers?

RESPONSE: No. I have never condoned violence against law enforcement officers. Violence is never appropriate and violence against law enforcement officers is a crime. I have incredible respect for law enforcement and I am thankful for the officers who risk their lives to keep our communities safe. I have worked closely with law enforcement throughout my career, which is why my nomination is supported by every major law enforcement organization. If I am confirmed as Associate Attorney General, it will be my mandate to enforce the laws and the Constitution of the United States, including laws penalizing acts of violence against law enforcement.

13. Do you believe speech alone—with no attendant conduct—should ever constitute a hate crime?

RESPONSE: Freedom of speech is a fundamental value protected by the First Amendment. The Supreme Court has generally excluded from First Amendment protection only "well defined and narrowly limited classes of speech" such as "obscenity," "defamation," "fraud," "incitement," and "speech integral to criminal conduct." *United States v. Stevens*, 559 U.S. 460, 468-69 (2010) (citation omitted). If I am confirmed as Associate Attorney General, my mandate will be to enforce the laws and Constitution of the United States. Enforcement decisions must be based on the facts and the law.

14. Ms. Gupta, you have tweeted:

"Full participation in school sports is fundamentally a civil and human rights issue. Anti-trans discrimination has no place in any of our institutions, including school athletics."
Do you stand by this statement?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. Transgender people can be discriminated against because their gender identity does not match the sex they were assigned at birth. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law. I understand that a number of pending legal challenges concern the rights of transgender individuals to participate in schools’ athletic programs, and that the Department recently withdrew some filings that the prior Administration made in some of those cases. Because I am not in the Department, I have not been privy to any ongoing conversations about such matters.

15. If you are confirmed, do you commit to upholding Title IX’s intent to provide for a biological woman’s “fundamental right,” to compete in school sports on fair and equal grounds?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. Transgender people can be discriminated against because their gender identity does not match the sex they were assigned at birth. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law. I understand that a number of pending legal challenges concern the rights of transgender individuals to participate in schools’ athletic programs, and that the Department recently withdrew some filings that the prior Administration made in some of those cases. Because I am not in the Department, I have not been privy to any ongoing conversations about such matters.

16. The White House has reportedly clarified that President Biden’s “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation” “does not tie an education institution’s federal funding to allowing biological male athletes access to women’s sports teams and scholarships.” If confirmed, will you commit to this clarification from the Biden White House that no educational institution’s federal funding will be contingent on allowing biological male athletes access to women’s sport’s teams and scholarships?

RESPONSE: If I am confirmed as Associate Attorney General, I will act consistently with any policy guidance issued by the White House, so long as it complies with the law. I understand from February 2, 2021 reporting in *USA Today*, that the White House has issued a clarifying statement that the Executive Order does not tie an education institution’s federal funding to allowing biological male athletes access to women’s sports teams and scholarships.

17. In your hearing, I asked you to identify an age at which it would be inappropriate to grant a gender reassignment surgery to a child, other than surgeries on infants born intersex. You did not answer the question. At what age would it be inappropriate to grant a gender reassignment surgery to a child, other than surgeries on infants who are born intersex?

RESPONSE: A person’s gender identity is a highly personal matter; each situation is unique, whether involving a minor or an adult, and any decision to receive associated medical treatment is similarly personal and highly particular to the individual. If I am confirmed as Associate Attorney General, it will not be my mandate to proscribe rules for how individual families and persons should address these very personal situations. I will enforce all federal laws, and work to ensure that every person is treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love.

18. You have said, “Policing is inherently local. But [] there are things that the Federal Government can do to support, to push, and the Justice Department has a very big role. . . .” If a state, like Oregon, would like to ban no-knock warrants, on what grounds would it be appropriate for the federal government to interfere with the Oregon legislature doing so?

RESPONSE: Congress has provided the federal government, and the Department of Justice in particular, a number of tools to promote and support 21st century policing. The Justice Department cannot force state legislatures to implement or refrain from implementing specific policies.

19. But if another state decides not to ban no-knock warrants, can the federal government force its legislature to do so?

RESPONSE: No.

20. Could the DOJ, perhaps, initiate a pattern and practice investigation to push the local departments to ban these warrants?

RESPONSE: It would be inappropriate for the Department of Justice to open an investigation with any particular outcome in mind. The Department must be guided only by facts and law and not prejudge the outcome of any investigation or potential remedy for constitutional or statutory violations, where those are found.

The Supreme Court has held that, “[i]n order to justify a ‘no-knock’ entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.” *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997). Because I am careful to understand the relevant facts before forming judgments, I am not in a position to opine, in the abstract, about what facts might justify the Justice Department in initiating a pattern or practice investigation with respect to use of no-knock warrants.

21. Is there an established threshold that must be breached before the DOJ can open a pattern and practice investigation?

RESPONSE: In determining whether to open a pattern or practice investigation, the threshold questions the Civil Rights Division asks are: (1) whether the allegations, if proven, establish a violation of the Constitution or federal laws; and (2) whether the allegations, if proven, constitute a pattern or practice, as opposed to sporadic or isolated violations of the Constitution or federal laws. Civil Rights Division, U.S. Department of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present* (January 2017).

22. Will you commit to limit pattern and practice investigations to only those jurisdictions where an actual pattern of established unconstitutional behavior has been substantiated by court outcomes?

RESPONSE: Congress has authorized the Attorney General to investigate and litigate cases involving “a pattern or practice of conduct by law enforcement officers” that violates Constitutional or federal rights. Civil Rights Division, U.S. Department of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present* (January 2017).

23. In June of 2020, you wrote a letter to Congress urging us to strengthen the George Floyd Justice in Policing Act, in part, by making a federal prohibition on no-knock warrants. You seemed to understand at that time that this kind of policy would be one for Congress to determine, not the DOJ. Do you continue to believe that the role of the DOJ is not to make policies the Biden Administration prefers but to enforce the laws Congress has created?

RESPONSE: As Attorney General Garland has explained, the Justice Department advances the policies of the President as long as they are consistent with the law. Congress enacts laws. On the other hand, as Attorney General Garland has also explained, decisions concerning the Department of Justice's investigations and prosecutions—its duty to enforce the laws enacted by Congress—must be based on the facts and the law. The Department has developed norms, policies, and traditions to protect the independence of those decisions, and President Biden has committed that he will not interfere with them.

24. Will you commit to not using pattern and practice investigations to create policies and “blueprints” of policies which Congress has refused to create?

RESPONSE: Law enforcement agencies and leaders can review and adopt policies in Department of Justice consent decrees if they choose, but Department of Justice consent decrees are not the equivalent of a federal law enacted by Congress and signed by the President.

25. I know you are a strong proponent of pattern and practice investigations, consent decrees, and compliance enforcement. How much does it generally cost a jurisdiction under a consent decree to pay of the independent monitor who tracks compliance with the consent decree?

RESPONSE: The cost of independent monitors varies by consent decree.

26. Would that money be better spent investing in the community, in the other resources you so often claim should take precedence over police funding?

RESPONSE: Community-police trust is essential to ensuring public safety. Throughout my career, I have supported law enforcement, including by advocating for greater resources for the police where appropriate. I share Attorney General Garland’s commitment to the Justice Department’s longstanding practice of likewise supporting law enforcement, including by helping state and local police departments secure the resources they need to reform, build community trust, and ensure the safety of their communities. I have also talked about the importance of investments in communities that promote public safety, including investments in mental health services and community-based drug treatment programs, for example. Because I am careful to understand the relevant facts before forming judgments, I am not in a position to opine, in the abstract, about any potential trade-offs between these kinds of investments and the costs associated with the independent monitors you describe.

27. In many of the jurisdictions where you were responsible for a consent decree, we now have more police officers investigation other police officers than we have officers investigating crimes in the community. What effect does this culture of suspicion have on the moral of our law enforcement officers? Are these jurisdictions able to keep officer levels at optimum levels?

RESPONSE: Congress has authorized the Justice Department to pursue consent decrees, which are sometimes appropriate to seek to ensure constitutional policing. I understand that, in our country, there are over 17,000 police departments, and that at the conclusion of my tenure leading the Justice Department’s Civil Rights Division in 2017, there were 14 consent decrees in place, reflecting that they are used judiciously. The Justice Department promotes constitutional policing and supports law enforcement to be able to do their critical jobs of maintaining public safety.

28. What do these consent decrees have on crime in these jurisdictions? As far as I can tell the crime levels in most of the jurisdictions you put under consent decrees saw dramatic increases in violent crimes—murders, rapes, and robberies. Is that correct?

RESPONSE: As Attorney General Garland has explained, Congress has authorized the Justice Department to pursue consent decrees, which are sometimes appropriate to enact a shared goal. I understand that, in our country, there are over 17,000 police departments, and by the end of Obama administration, there were 14 consent decrees in place, reflecting that they must be used judiciously. Consent decrees are not perfect and do not create perfect police departments. However, studies have concluded that consent decrees do not result in increased crime, but do result in positive outcomes.

29. Ms. Gupta, in the pattern and practice investigations you were responsible for under the Obama administration, you regularly engaged with and relied heavily on “hearing from and

incorporating the views of the organizations that specialize in protecting rights established by the Constitution and the laws of the United States” because such organizations “ensure[] the soundness of the efficacy of the Department’s consent decree policies.” Wouldn’t it be more appropriate, and in keeping with the separation of powers, for the lobbyists and the activist groups to be sitting down with members of Congress to advocate for changes in policy instead of making an end-run around the legislative process—both federal and state—by allowing activists to determine the policies in an individual police department?

RESPONSE: Law enforcement agencies and leaders can review and adopt policies in Department of Justice consent decrees if they choose, but a consent decree is not the equivalent of a federal law enacted by Congress and signed by the President.

30. Ms. Gupta, you have called for an end to the war on drugs, and stated, “The war on drugs has been a war on communities of color.” I share some of your concerns about the disparity of sentencing between crack and powder cocaine crimes. I am also concerned, as the DOJ has failed to enforce any marijuana laws since the Obama Administration, that under your watch it will entirely fail to bring any civil enforcement actions under the Controlled Substances Act. Will you commit to enforcing federal drug laws as they are currently constituted?

RESPONSE: If confirmed as Associate Attorney General, I will enforce all federal laws, and I will work with Attorney General Garland to protect American communities from the harmful effects caused by criminal drug enterprises. As Attorney General Garland noted in his testimony, the Department will focus resources on the most dangerous criminal enterprises linked to the sale and manufacture of illicit drugs.

31. Recently, there has been growing discussion in the United States concerning the establishment of “supervised consumption services” or “safe consumption sites” for individuals to come to a designated area for the purpose of using drugs. What are your views on these sites? How should DOJ handle any attempts to establish more of these sites throughout the country?

RESPONSE: If confirmed, I will work with Department leadership and career staff to enforce all federal laws, including federal laws concerning drug use. There are many tools in the Associate Attorney General’s portfolio—like grantmaking programs—that can promote data-driven, effective solutions to the problem of substance use disorders. If I am confirmed as Associate Attorney General, the concept of “safe consumption sites” is something that we would examine closely, subject to the principle that Departmental activities must be consistent with federal law.

32. In *United States v. Safehouse*, the DOJ sued a Philadelphia planned “safe consumption sites” on the grounds that it would violate the federal Controlled Substances Act’s (“CSA”) so-called “crack house provision.” The 3rd Circuit found that this statute prohibits operation of safe injection facilities and as a result the site could not open. Do you agree with this decision? If so, would you commit to enforcing the CSA in its entirety, a law that President Biden was a proponent of while serving in the U.S. Senate? What if the policy of the Biden-Harris Administration, advocates or encourages the creation of these sites?

RESPONSE: I understand that *United States v. Safehouse*, No. 20-1422 (3d Cir. 2021), is currently the subject of a petition for rehearing en banc, filed on February 26, 2021. Since I am not at the Department, I am not privy to any ongoing conversations about that matter, and it would be inappropriate for me to comment on pending litigation.

33. You testified in your confirmation hearing, “Violence is never appropriate. The First Amendment only protects peaceful protest. And I do think the Justice Department [] has to enforce the law and protect communities from violence, whether it’s in the course of a protest or not, regardless of who is engage in it. Should every rioter in Portland; Washington, DC; New York, and Kenosha, WI be prosecuted?”

RESPONSE: Violence is never appropriate, and those who engage in such violence should be prosecuted. Department investigations and prosecutions must follow the facts and applicable law.

34. Should every rioter who damages private property be prosecuted?

RESPONSE: Violence is never appropriate, and those who engage in such illegal violent acts should be prosecuted.

35. After the attacks by looters and rioters on federal buildings and businesses that occurred this past summer in Portland, Seattle, New York, Washington, DC, Kenosha and other cities across America, will you commit to investigate whether there was coordination involved in those events?

RESPONSE: Violence is never appropriate. The First Amendment only protects peaceful protests, and the Justice Department must enforce the law and protect communities from violence regardless of who engages in it. Because I am not in the Department and therefore am not aware of all the relevant facts, I am not in a position to comment on any particular investigation.

36. In the hearing we discussed your unforgiving treatment of Ryan Bounds. You complained about his college writings despite your also having written questionable things while in college—not to mention the vicious and partisan things you have tweeted in the past year for which you offered apology in the hearing. When reminded of your comments about Mr. Bound’s apology, (“While he has recently apologized for those comments, the timing of that apology suggests it is one of convenience rather than remorse, offered in a last-ditch effort to salvage his nomination and win the support of his home-state senators.”), and asked whether such a harsh, unyielding standard should be applied to you or to other nominees, you replied:

“Senator, I believe that people should be able to have second chances and so to the extent that a comment in the past about [a] judicial nominee I believe that it was about [] substantive comments he had made in college writings, but as you know, maybe from my criminal justice work, I am a believer in second chances and redemption, and I would ask for that today. . .”

As such a firm believer in second chances, why did you not extend that opportunity to Mr. Bounds, a man who served for numerous years as the leader of the Equity, Diversion, and Inclusion Committee of the Multnomah Bar Association, who worked tirelessly to advance diversity through educational, scholarship, and mentoring programs within the legal profession, and who, by all accounts, is invested in the uplifting of those around him no matter color, sexual orientation, or creed?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration's judicial nominees. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees.

37. Should Mr. Bounds be given a second chance now?

RESPONSE: Whether someone is nominated to be a judge is the prerogative of the President of the United States.

38. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to oppose any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution's First Amendment and in other federal laws, including the Religious Freedom Restoration Act. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department's Civil Rights Division. In addition to overseeing the Division's enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. If confirmed, I will faithfully uphold all rights guaranteed by the Constitution and other federal laws—including religious freedoms—to the fullest extent of the law. And if I were asked to consider an amendment to the statute, I would carefully review all of the relevant legal and policy issues, as well as consult Department leaders and career staff, to help formulate the Department's position.

39. Do you believe agencies should try to “aggressively” interpret statutes in order to accomplish White House priorities?

RESPONSE: Like Attorney General Garland, if confirmed, my legal advice on matters of statutory interpretation, as on all other matters, will reflect my independent judgment.

40. Do you believe it is appropriate for agencies to address a problem through regulations where Congress is deadlocked on an issue?

RESPONSE: As Attorney General Garland testified, the mere fact that the Executive Branch disagrees with congressional inaction cannot create regulatory authority that would not otherwise exist. But congressional action or inaction can be relevant to the scope of the Executive’s authorities, as Justice Jackson explained in his concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-37 (1952).

41. Would you be in favor of agencies addressing problems like police reform, transgendered students in sports, and other controversial issues through regulation?

RESPONSE: Like Attorney General Garland, my answer would depend on the context, including the agency’s relevant legal authorities and the specific nature of the regulation at issue.

42. As a nominee for a position in the Executive branch, do you think there are any limits on the President’s use of prosecutorial discretion?

RESPONSE: I agree with Attorney General Garland that prosecutors and other government agencies can exercised discretion about how to allocate their limited enforcement resources. But the Executive Branch cannot simply decide, based on a policy disagreement, that it will not enforce a law at all.

43. Is there a point where “prosecutorial discretion” simply becomes “executive fiat?”

RESPONSE: Please see my response to Question 42.

44. Do you agree that prosecutorial discretion should be the exception rather than the rule—i.e., that in the typical case covered by a law, it is the Executive’s duty to enforce that law?

RESPONSE: I agree with Attorney General Garland that the Department of Justice has a duty to vigorously enforce the law. The Supreme Court has recognized, however, that an agency “generally cannot act against each technical violation of the statute it is charged with enforcing.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). In determining whether to bring an enforcement action, the Court explained, “the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies, and, indeed, whether the agency has enough resources to undertake the action at all.” *Id.*

45. What is the difference between “equity” and “equality?”

RESPONSE: In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, E.O. No. 13985 (Jan. 20, 2021), President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As Attorney General Garland has observed, that definition aligns with bedrock legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

46. In order to achieve “equity,” is it ever necessary to discriminate against members of some groups in favor of others?

RESPONSE: In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As Attorney General Garland has observed, that definition aligns with bedrock legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

47. If treating people equally before the law results in disparate outcomes, is it acceptable to discriminate against those with favorable outcomes before the law in order to correct that disparity?

RESPONSE: In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As Attorney General Garland has observed, that definition aligns with bedrock legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

48. How do you define “systemic racism?”

RESPONSE: I share Attorney General Garland’s view that systemic racism refers to historic patterns or practices that have had a disparate impact on communities of color and other communities, such as the fact that they have disproportionately lower rates of employment and wealth accumulation. As Attorney General Garland explained and I testified, acknowledging systemic racism in society does not mean that any particular institution or individual is racist.

49. How do you define “critical race theory?”

RESPONSE: While I am certainly not a legal scholar or an expert on critical race theory, I do believe that there are structural barriers to full equality for people of color that have resulted from the long and difficult history of the United States. These systemic barriers have been discussed by both President Biden and Attorney General Garland. If confirmed, I will consider these issues in the context of ensuring that our Constitution and our federal civil rights laws are fully and fairly enforced.

50. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?

RESPONSE: I share Attorney General Garland’s view that systemic racism refers to historic patterns or practices that have had a disparate impact on communities of color and other communities, such as the fact that they have disproportionately lower rates of employment and wealth accumulation. While I am certainly not a legal scholar or an expert on critical race theory, I do believe that there are structural barriers to full equality for people of color that have resulted from the long and difficult history of the United States. These systemic barriers have been highlighted by both President Biden and Attorney General Garland. If confirmed, I will consider these issues in the context of ensuring that our Constitution and our federal civil rights laws are fully and fairly enforced.

51. Do you think America’s criminal justice system, including the federal courts, U.S. Attorney’s offices, and the Department of Justice are “systemically racist?”

RESPONSE: I share Attorney General Garland’s view that systemic racism refers to historic patterns or practices that have had a disparate impact on communities of color and other communities, such as the fact that they have disproportionately lower rates of employment, wealth accumulation, and higher rates of incarceration. As Attorney General Garland explained and I testified, acknowledging systemic racism in society does not mean that any particular institution or individual is racist.

52. Congresswoman Ayanna Presley has said, in relation to criminal justice policy: “[w]e must now be every bit as intentional in legislating justice and equity, and that starts with embracing anti-racism as a central tenet of the policymaking process.” Do you plan to institute “anti-racist” policies in the divisions under your supervision at the Justice Department? If so, which policies do you plan to institute?

RESPONSE: Criminal justice reform is an important bipartisan issue and, if confirmed, I would look forward to working with Congress and the Administration to ensure that our criminal justice system is fair, equitable, and keeps communities safe.

53. What current policies of the Justice Department are “racist?”

RESPONSE: I share Attorney General Garland’s view that systemic racism refers to historic patterns or practices that have had a disparate impact on communities of color and other communities, such as the fact that they have disproportionately lower rates of employment and wealth accumulation. As Attorney General Garland explained and I

testified, acknowledging systemic racism in society does not mean that any particular institution or individual is racist.

54. Do you believe that members of historically oppressed minority groups should be treated more favorably than those of other races in prosecutions and sentencing decisions to correct for the effects of systemic racism?

RESPONSE: In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As Attorney General Garland has observed, that definition aligns with bedrock legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

55. For purposes of federal law, when does life begin?

RESPONSE: In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court stated that the court “need not resolve” the question of when life begins. *Id.* at 159.

56. Does the definition of when human life begins for purposes of federal law differ from the scientific definition of when human life begins?

RESPONSE: In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court stated that the court “need not resolve” the question of when life begins. *Id.* at 159.

57. At what point in human development does the United States have a compelling interest in protecting a human life?

RESPONSE: In *Casey*, the Supreme Court held that states may regulate abortion prior to viability based on the state’s interest in maternal health and potential life, provided those regulations did not impose and do not have “the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 877 (1992).

58. Do you support laws penalizing fetal homicide?

RESPONSE: If I am confirmed as Associate Attorney General, my mandate will be to enforce the law.

59. Will you commit that the Department of Justice will not rely upon data or information compiled by the Southern Poverty Law Center considering the serious allegations of systemic sexual harassment, racial discrimination and their ties to domestic terrorism cases?

RESPONSE: Because I am not currently in the Department, I am not familiar to what extent the Department is relying upon such data or information, and I am not familiar with the facts of these allegations.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Vanita Gupta, Nominee to be Associate Attorney General

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. The Department of Justice has filed statements of interest in multiple cases alleging that, under the guise of public health, state or local governments have discriminated against religious individuals and institutions by forcing them to follow particularly and uniquely burdensome COVID restrictions. For example, the Department filed a statement of interest arguing that the Constitution and federal law required the District of Columbia to accommodate Capitol Hill Baptist Church's effort to hold worship services outdoors, at least to the same extent that the District of Columbia was already allowing other forms of outdoor First Amendment activity. Please explain what you understand to be the Department's position as set forth in this statement of interest.

RESPONSE: Because I was not working at the Department at the time the statement of interest you reference was filed, I am not aware of all the relevant facts, circumstances, and details concerning this statement of interest, and therefore I am not in a position to respond. In general, however, the Constitution and other federal laws provide strong protections for religious liberty and, if confirmed, I am committed to fully respecting and even-handedly enforcing those protections, alongside career staff and Department leadership.

2. Do you agree with the statement of interest referenced in question 1?

RESPONSE: I am not familiar with all of the relevant facts, circumstances, and details concerning the statement of interest you are asking about. Therefore, I am not in a position to respond. However, if confirmed, I look forward to learning more about the filing and the arguments made in it.

3. Would you have supported or encouraged this filing, if you were in the Department last fall?

RESPONSE: Because I was not working at the Department at the time the statement of interest you reference was filed, I am not aware of all the relevant facts, circumstances, and details concerning this statement of interest, and therefore I am not in a position to respond. If confirmed, however, I would work to ensure that all of the Department of Justice's litigating positions are based on a careful review of the relevant facts and laws, and made in consultation with other Department leaders and career lawyers.

4. Are you willing to commit to filing suit, or supporting suits, against states and localities that single out religious institutions and religious individuals in violation of the First Amendment?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution's First Amendment and in other federal laws, including the Religious Freedom Restoration Act. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department's Civil Rights Division. In addition

to overseeing the Division’s enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. If confirmed, I will uphold all rights guaranteed by the Constitution and other federal laws—including religious freedoms—to the fullest extent of the law.

5. In response to an article reporting that the White House had “sidelined” Dr. Fauci, you tweeted, “[t]his all makes me so angry. The flat out denial/sidelining/attacking of science and public health expertise while our coronavirus infection rates continue to rise 6 months in.” Was this tweet made in your capacity as President and CEO of the Leadership Conference?

RESPONSE: Yes.

6. How do you reconcile an individual’s constitutional right to their religious beliefs with federal laws that limit his or her ability to act on those sincerely held beliefs?

RESPONSE: Congress has enacted legislation that helps determine how to balance religious exercise and government restrictions. The Religious Freedom Restoration Act provides that the federal government may not “substantially burden a person’s exercise of religion” unless it “demonstrates that application of the burden to the person” is “in furtherance of a compelling government interest” and is “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1. As the Supreme Court’s decisions illustrate, a reviewing court is ultimately responsible for determining whether a law substantially burdens a person’s exercise of religion. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719-726 (2014).

7. The Biden administration is now on the record stating its opposition to exemptions for those who hold traditional religious views on sexuality and gender. What is the role of the Department of Justice in preventing the federal and state governments from discriminating against religious Americans who hold traditional religious views on sexuality and gender?

RESPONSE: The Justice Department is tasked with both ensuring freedom of religion and enforcing anti-discrimination laws. If confirmed, I will endeavor to fully and fairly enforce all federal laws within my purview, including both federal anti-discrimination laws and laws that protect religious liberty.

8. Is it evidence of hostile workplace for an individual to say that there are only two genders?

RESPONSE: In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court held that Title VII’s prohibition on discrimination “because of . . . sex” covers discrimination on

the basis of gender identity and sexual orientation. The showing of a hostile work environment in employment discrimination matters involves facts and circumstances specific to individual employees.

9. Does it promote violence against, or directly attack, a person on the basis of gender identity to say there are only two genders?

RESPONSE: President Biden has issued an Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, E.O. No. 13988 (Jan. 20, 2021), that aims to combat discrimination on the basis of sexual orientation and gender identity. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law.

10. Does it promote violence against, or directly attack, a person on the basis of religious affiliation to say there are more than two genders?

RESPONSE: Freedom of religion is a fundamental right and the right of individuals to hold religious beliefs is absolute. The Justice Department is tasked with both ensuring freedom of religion and enforcing our anti-discrimination laws. The Constitution and other federal laws provide strong protections for religious liberty and if confirmed, I would work to ensure the full and fair enforcement of the law, alongside career staff and Department leadership.

11. Is the Religious Freedom Restoration Act a civil rights law?

RESPONSE: The Religious Freedom Restoration Act prohibits the federal government from substantially burdening religious exercise unless the government has a compelling interest and the restriction is the least restrictive means of furthering that compelling governmental interest. It is not always clear what laws constitute civil rights laws, but to the extent this statute protects people from unlawful government interference with their religious liberties, it can be viewed as a civil rights law.

12. Do you agree that limiting the reach of the Religious Freedom Restoration Act would necessarily limit the civil rights of some individuals, even if you also believe it would promote the civil rights of other individuals?

RESPONSE: The Religious Freedom Restoration Act requires courts to balance religious exercise and government burdens imposed upon that exercise. As the Supreme Court’s decisions illustrate, a reviewing court is ultimately responsible for determining whether a law substantially burdens a person’s exercise of religion. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719-726 (2014). How courts weigh the issues and strike the balance can impact both religious exercise and the scope of government action.

13. At your hearing, I asked you about a provision in the Equality Act that expressly strips religious liberty protections from Americans across the country, and you refused to

answer. The provision in question states that the Religious Freedom Restoration Act “shall not provide a claim concerning or a defense to a claim under, [specific federal laws], or provide a basis for challenging the application or enforcement [of those laws].” Yes or no, do you support this specific provision? If you still refuse to answer, please state why you are unable to do so.

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution’s First Amendment and in other federal laws, including the Religious Freedom Restoration Act. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department’s Civil Rights Division. If confirmed, I look forward to reviewing any proposed legislation, including the Equality Act, and, in consultation with Department leadership and career attorneys, helping determine the Department’s official position on the matter.

14. Please describe your understanding of the holding of *Espinoza v. Montana Department of Revenue* (2020).

RESPONSE: In *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246 (2020), the Supreme Court considered a provision of the Montana Constitution that prohibited any state aid to any school controlled by a “church, sect, or denomination.” *Id.* at 2251, 2259. The Court held that the Montana Supreme Court’s application of that no-aid provision to strike down a program to provide tuition assistance to parents who send their children to private schools violated the First Amendment.

15. A letter you signed from the Leadership Conference last year described a court decision permitting the Little Sisters of the Poor an exemption to the Affordable Care Act’s contraceptive mandate as “troubling.” Please explain why this decision was “troubling.”

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution’s First Amendment and in other federal laws. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department’s Civil Rights Division. In addition to overseeing the Division’s enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed.

The Supreme Court issued its opinion in *Little Sisters*. If confirmed, it would be my mandate to fully and fairly enforce all federal laws, consistent with Supreme Court precedent, including both federal anti-discrimination laws and laws that protect religious liberty.

16. Does the letter from the Leadership Conference referenced in question 15 represent your personal views?

RESPONSE: No. This statement was made in a letter that I signed in my capacity as the President and CEO of the Leadership Conference, where I served as an advocate, and often a voice, for the civil rights community. As the head of the Leadership Conference, I often communicated the organization’s positions. If confirmed as Associate Attorney General, I would carry out the mandate of the Justice Department, which is to enforce the duly enacted laws of the United States, free from political influence or opinion. I have immense respect for the clear distinction between these roles.

17. Do you believe the decision referenced in question 15 was “troubling”?

RESPONSE: Please see my response to Question 15.

18. Is it religious discrimination if the government forces a religious baker or florist to provide customized services and products for a ceremony or event celebrating an LGBTQ wedding, even if providing that service or product unavoidably conflicts with his or her religious beliefs?

RESPONSE: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court’s decision centered around the fact that the state commission that heard the baker’s claim of religious discrimination did not do so with the neutrality that the Constitution requires—i.e., the baker deserved a hearing free from religious hostility. Importantly, the Court’s decision recognized the authority of states to “protect the rights and dignity of gay persons who are, or wish to be, married but who face discrimination when they seek goods or services,” and also that all people have the right to the free exercise of religion. *Id.* at 1723. If confirmed, I will work with other Department leaders and with career staff to follow and enforce the law.

19. If a student Christian campus organization asks a member who begins a same-sex relationship to step down, on grounds that the organization does not support same-sex marriage, does that violate the member’s civil rights?

RESPONSE: I understand that this issue is the subject of pending litigation. Because I am not in the Department, I cannot comment on this litigation unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and laws.

20. As head of the Civil Rights Division, you investigated and prosecuted state and local correctional facilities that failed to accommodate prisoners’ religious dietary requests. If, as your enforcement suggests, prisoners have the right to have their religious requests respected, should law-abiding Americans who hold traditional views on marriage be afforded the right to live out those views in the public square?

RESPONSE: In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), the Supreme Court recognized the authority of states to “protect the rights and

dignity of gay persons who are, or wish to be, married but who face discrimination when they seek goods or services,” and also that all people have the right to the free exercise of religion. *Id.* at 1723. If confirmed, I will work with other Department leaders and with career staff to follow and enforce the law.

21. Please explain the holding of *Bostock v. Clayton County* and its relevance to Department of Justice enforcement policy.

RESPONSE: As set forth in the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, E.O. No. 13988 (Jan. 20, 2021), in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court held that Title VII’s prohibition on discrimination “because of . . . sex” covers discrimination on the basis of gender identity and sexual orientation. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law.

22. Does *Bostock v. Clayton County* apply outside of the employment context?

RESPONSE: In President Biden’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, he stated that:

In *Bostock v. Clayton County*, 590 U.S. ____ (2020), the Supreme Court held that Title VII’s prohibition on discrimination “because of . . . sex” covers discrimination on the basis of gender identity and sexual orientation. Under *Bostock*’s reasoning, laws that prohibit sex discrimination — including Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 et seq.), the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), and section 412 of the Immigration and Nationality Act, as amended (8 U.S.C. 1522), along with their respective implementing regulations — prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary.

23. Do you agree that free speech is an essential and irreplaceable American value?

RESPONSE: The protection of speech against government regulation is a fundamental value enshrined in the First Amendment. This is an issue of great importance to me. I worked for eight years at the American Civil Liberties Union—an organization whose founding mission was to fight for the free expression of all ideas, popular or unpopular. If confirmed, I will be committed to upholding the First Amendment’s strong protections for all Americans.

24. In your testimony, you stated that you are “sure” you have defended the speech of someone with whom you disagreed. Having had an opportunity to consider it in full, please provide examples of when you defended the speech rights of an individual whose viewpoint diverged from yours.

RESPONSE: While I was Deputy Legal Director of the ACLU, the organization defended the rights of anti-gay protestors to protest at the funerals of LGBTQ people. In the course of my work, I frequently had to defend the ACLU's participation in this case, even though I vehemently disagreed with the protestors' message and method of delivering it.

25. What are the most concerning present threats to free speech in America?

RESPONSE: Robust debate and the freedom of expression are cherished hallmarks of our democracy protected by the First Amendment. Protecting free speech in a democracy requires constant vigilance. The Department of Justice is responsible for upholding all constitutional rights, including the right to freedom of speech.

26. Does the First Amendment protect speech that some may consider offensive? If so, what are the limits to that protection?

RESPONSE: The protection of the First Amendment extends to speech that some may find offensive; indeed, the Supreme Court has "said time and again that 'the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.'" *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017).

27. What is "hate speech"? Is "hate speech," as you have defined it, protected by the First Amendment? If so, what are the limits to that protection?

RESPONSE: So far as I am aware, the Supreme Court has not defined "hate speech" or treated it as a distinct legal category. In general, the Court has instructed that the First Amendment excludes only a few "well defined and narrowly limited classes of speech" such as "obscenity," "defamation," "fraud," "incitement," and "speech integral to criminal conduct." *United States v. Stevens*, 559 U.S. 460, 468-69 (2010) (citation omitted).

28. Have you consulted, formally or informally, with Twitter, Facebook, or YouTube regarding their respective community standards and content moderation policies? If so, please explain the nature of your consultation.

RESPONSE: The Leadership Conference advocated for Facebook and Twitter to enforce their community standards, especially as it related to misinformation about the census and voting, to protect the civic participation of all, regardless of party affiliation or status. The coalition also urged Facebook to stop allowing unlawful ad targeting in housing ads. This work was not done as a consultation but as part of the coalition's non-partisan advocacy to protect civil rights, between a non-governmental organization and a private company.

29. You have stated that Facebook "promotes voter suppression under cloak of free speech" in response to an article in which you were quoted criticizing Facebook's refusal to remove statements from politicians when some consider those statements false. Do false statements by politicians constitute "voter suppression"?

RESPONSE: It is difficult for me to answer that question in the abstract. Whether any

particular action constitutes voter suppression depends on a careful assessment of the particular facts.

30. Do public educational institutions have the legal obligation to protect the speech rights of students and employees?

RESPONSE: Public educational institutions are bound by the First Amendment, which is incorporated against the states by the Fourteenth Amendment. See *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019).

31. Under the prior administration, the Department moved to protect free speech on college and university campuses. Will you continue to defend students across America against increasingly repressive speech codes?

RESPONSE: The Department of Justice is responsible for upholding all constitutional rights, including the right to freedom of speech.

32. Are educational institutions that receive federal funding permitted to discriminate on the basis of speech?

RESPONSE: In general, educational institutions and other organizations that agree to accept federal funding are bound by the conditions attached to that funding. See, e.g., *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 638 (1999) (prohibition on sex discrimination). I have not studied specific funding conditions that might address discrimination on the basis of speech.

33. Do you believe that corporations like Facebook, Twitter, and Google should have a special immunity from liability when publishing material that is unavailable to traditional publishers like the *New York Times*? Please explain why.

RESPONSE: As enacted, Section 230 of the Communications Decency Act established a framework governing the civil liability of corporations that publish user-generated content. President Biden and many members of Congress, including several members of the Judiciary Committee, have raised concerns about different aspects of Section 230. President Biden has expressed his willingness to work with Congress to develop a better framework that addresses dangerous and inappropriate behavior and still protects a free and open internet. If confirmed, I would welcome the opportunity to review this issue.

34. Would it be appropriate for the Department of Justice to work in any way with Facebook, Twitter, and/or Google to limit the availability or reach of constitutionally protected speech or information?

RESPONSE: No. The Department is bound to enforce the First Amendment's protections.

35. Many big technology platforms are funded and financed, in part, by the Chinese Community Party. Do you see the self-censorship of American media companies at the

behest of a fundamentally anti-western, anti-American regime as a problem? If not, why not?

RESPONSE: I have not studied this issue, but if confirmed, I would welcome the opportunity to learn more from you and others on this subject.

36. Is “misinformation” or “disinformation” constitutionally protected speech?

RESPONSE: In general, the Court has instructed that the First Amendment excludes only a few “well defined and narrowly limited classes of speech” such as “obscenity,” “defamation,” “fraud,” “incitement,” and “speech integral to criminal conduct.” *United States v. Stevens*, 559 U.S. 460, 468-69 (2010) (citation omitted).

37. You were in the Department of Justice during the time when Operation ChokePoint was active. Did you have any involvement, or in any way advise or participate, in this initiative? If so, please explain.

RESPONSE: I did not have any involvement.

38. Please describe your understanding of the Operation Choke Point initiative.

RESPONSE: I did not have any involvement with the Operation Choke Point initiative.

39. Do you believe Operation Choke Point was an appropriate use of the Department of Justice’s investigatory power?

RESPONSE: I did not have any involvement with the Operation Choke Point initiative.

40. You celebrated Wal-Mart’s decision to stop selling handguns and Delta’s decision end its partnership with the National Rifle Association. Also, in lettersto this Committee opposing judicial nominees, you repeatedly citedmembership in the NRA or service as counsel litigating in favor of the SecondAmendment as a disqualification from the bench. Do you consider it consistentwith the rule of law for the government to use its power to harass and undermine lawful businesses?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

41. In your testimony, the Committee never had the chance to hear your full viewson *Heller*

v. *District of Columbia*. Please describe your understanding of the holding of *Heller*.

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

42. Does a law prohibiting the ownership or possession of a magazine capable of holding more than 10 rounds of ammunition violate the Second Amendment?

RESPONSE: It is difficult to answer that question without further context. My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

43. Does a law prohibiting the ownership or possession of an “assault weapon,” as that term was used in the Public Safety and Recreational Firearms Use Protection Act, violate the Second Amendment?

RESPONSE: It is difficult to answer that question without further context. My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

44. Does a law prohibiting the carrying firearms outside the home violate the Second Amendment?

RESPONSE: It is difficult to answer that question without further context. My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The

Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

45. Does a law requiring universal background checks for the purchase of a firearm violate the Second Amendment?

RESPONSE: It is difficult to answer that question without further context. My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

46. Is the ability to own a firearm a personal civil right?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

47. Does the Civil Rights Division have a duty to ensure that states and localities do not infringe on the right to bear arms, just as it has a duty to ensure that states and localities do not infringe on other individual rights, such as the right to vote?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

48. Can an individual who believes *Heller* was incorrectly decided, and that thereis thus no

individual right to possess a firearm, fully and faithfully discharge the duties of Assistant Attorney General for the Civil Rights Division?

RESPONSE: If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

49. Will you commit to ensuring that all political appointees understand that the Second Amendment protects a personal civil right, and commit to providing training on the scope of that right to employees in the Civil Rights Division?

RESPONSE: If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

50. Do you personally own any firearms? If so, please list them.

RESPONSE: No.

51. Have you ever personally owned any firearms?

RESPONSE: No.

52. Have you ever used a firearm? If so, when and under what circumstances?

RESPONSE: No.

53. My office has received a number of complaints from Texas manufacturers regarding the benchmarks used to set the price of aluminum. Specifically, there is concern that the Midwest Premium (MWP) set by S&P Global Platts—a provider of energy and commodities information and a publisher of price benchmarks in the physical commodity markets—is causing market distortions and artificially inflating consumer prices. Can you commit that you or the appropriate member of your senior staff will examine this issue and carefully assess whether action by the Department of Justice is appropriate?

RESPONSE: The full and fair enforcement of our antitrust laws is critical to protecting and promoting market competition. If confirmed, I will support vigorous enforcement across all sectors of our economy, as all companies should be treated fairly under the antitrust laws.

54. Does the consumer welfare standard include consideration of more than just price? If so, what other aspects of a product or service does it take into account?

RESPONSE: Strong antitrust enforcement must be anchored by the rule of law. The consumer welfare standard, as currently applied by the Antitrust Division, takes into account many attributes of competition beyond price, such as service, quality, and

innovation. If confirmed, it will be my direction that our antitrust laws be used to effectively promote all aspects of market competition.

55. What is the relationship between the Antitrust Division and the FTC regarding competition policy and enforcement?

RESPONSE: Due to their overlapping jurisdiction, the FTC and the Antitrust Division share common missions, policies and practices. It is important for vigorous and effective antitrust enforcement that the two agencies have a cooperative and collegial relationship. If confirmed, I will work with the Antitrust Division to ensure such a relationship is maintained.

56. Does the Department of Justice have tools to encourage Google, Twitter, Facebook, and other large technology companies to limit the spread disinformation?

RESPONSE: As a Justice Department nominee, I do not yet know what additional resources would be required by the Department with regard to particular initiatives. If confirmed, I will take steps to ensure, consistent with Congress's appropriations, that sufficient resources are available to support the Department's essential work.

57. During your hearing, you confirmed that major technology companies have donated to your organization. Did Alphabet, any of its subsidiaries, or any of its executives, donate to the Leadership Conference or otherwise financially support its advocacy between 2017 and 2020? If so, who, and in what amounts?

RESPONSE: From 2017 through 2020, the Leadership Conference received \$150,000 from Google. From 2017 through 2020, the Leadership Conference Education Fund received \$3,051,500 from Google (\$3,000,000 was for the organization's police-community trust initiative).

58. Did Twitter or any of its executives, donate to the Leadership Conference or otherwise financially support its advocacy between 2017 and 2020? If so, who, and in what amounts?

RESPONSE: No.

59. Did Facebook, any of its subsidiaries, or any of its executives, donate to the Leadership Conference or otherwise financially support its advocacy between 2017 and 2020. If so, who, and in what amounts?

RESPONSE: No.

60. When you met with Mark Zuckerberg in the fall of 2019, was he aware that you had previously served as the head of the Civil Rights Division, under the Obama-Biden administration?

RESPONSE: I do not know.

61. Are you involved in fundraising for the Leadership Conference? If so, in what way? Did your fundraising efforts involve conversations with representatives from Twitter, Facebook, or Alphabet, or any affiliated entities?

RESPONSE: As President and CEO of the Leadership Conference, I was involved in fundraising for the organization. I met with donors and oversaw the Development Department that applied for foundation grants. The Leadership Conference did not request or receive funds from Twitter or Facebook. The organization did receive contributions from Google.

62. The current administration's immigration policy has resulted in more than 3,000 migrant children in custody. That number is higher than the 2019 border crisis. Do you agree that there is currently a crisis at the border?

RESPONSE: I am not currently at the Department, and I am only aware of publicly reported information concerning challenges at our southern border. It is my understanding that the Administration is undertaking a comprehensive review of immigration policies in an effort to ensure that they are consistent with the law and the Nation's values.

63. Should illegal entry into the United States remain a criminal offense?

RESPONSE: President Biden has been clear that he does not support decriminalization of the border. If confirmed, criminal enforcement of immigration-related offenses will not be within my direct purview.

64. Is it appropriate for the executive to refuse to enforce a law, absent constitutional concerns?

RESPONSE: As Attorney General Garland has stated, throughout our history, prosecutors and other government agencies have exercised discretion in deciding how to allocate their limited resources. The Supreme Court has explained that, in exercising that discretion, an agency may appropriately consider not only "whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

65. Are there any differences, under federal law, between the rights of a citizen and the rights of an illegal alien? Please describe any differences.

RESPONSE: As a general matter, there are differences between the rights afforded to citizens and non-citizens, and among non-citizens depending on their immigration status.

The legal bases for those differences are the relevant constitutional and statutory provisions, some of which apply to all persons in the United States and some of which differentiate on the basis of citizenship or immigration status.

66. One of the biggest regulatory proposals of the Obama-Biden administration was the Clean Power Plan rule. It required power plants, including coal plants, to install specific emissions controls, even though such controls were not “commercially proven” at the time. The Supreme Court stayed enforcement of the rule before it took effect, finding legal concerns and noting that the rule stood to do immediate and irreparable damage. Was the Clean Power Plan rule lawful?

RESPONSE: My understanding is that these matters remain the topic of pending litigation. As a Department of Justice nominee, it would be inappropriate for me to comment unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and laws.

67. Would you have advised the Obama-Biden administration to go forward with the Clean Power Plan rule?

RESPONSE: My understanding is that these matters remain the topic of pending litigation, so it would be inappropriate for me to comment unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and laws.

68. If the Biden administration were to again promulgate a rule that unlawfully restructured an entire industry, rather than lawfully limiting emissions at specific sources, will you defend that unlawful action?

RESPONSE: As Attorney General Garland testified, the Department of Justice is part of the Executive Branch, and for that reason, on policy matters, the Department advances the policies of the President as long as they are consistent with the law.

69. Will you commit that Energy and Natural Resources Division (ENRD) enforcement actions will be premised solely on existing legislation, and not on legislative history, agency guidance documents, or executive order policy announcements?

RESPONSE: If confirmed, I will insist that the Department’s decisions in all enforcement matters are based solely on an evenhanded application of the law to the facts.

70. Will you commit that ENRD settlements will only impose remedies consistent with applicable statutory authority?

RESPONSE: If confirmed, I would seek to ensure that the Justice Department complies with all applicable statutory requirements.

71. ENRD has worked vigorously to defend approvals for pipeline infrastructure throughout the nation, including the Dakota Access and Keystone XL pipelines. During

the next few years, ENRD will likely have to justify decisions to reverse course and stop projects like these. Is it lawful for the federal government to deny a permit for a pipeline for political reasons unrelated to the criteria laid out in statute?

RESPONSE: Because I am not presently at the Department, I do not want to make any pre-judgments about factual issues related to any particular pipeline.

72. You called the Keystone XL pipeline “dirty and dangerous.” Do you stand by this statement?

RESPONSE: Because I am not presently at the Department, I do not want to make any pre-judgments about factual issues related to any particular pipeline.

73. Do you agree that pipelines continue to be the safest mode of transport for oil and natural gas?

RESPONSE: Because I am not presently at the Department, I do not want to make any pre-judgments about factual issues related to any particular pipeline. With respect to general matters of policy, because the Department is part of the Executive Branch, the Department advances the policies of the President as long as they are consistent with the law.

74. The Biden EPA sent a letter to DOJ, instructing it to “seek and obtain a stay or stays of proceedings in pending litigation seeking judicial review of any EPA regulation promulgated between January 20, 2017, and January 20, 2021.” In essence, it looks like the DOJ has been instructed to stop defending the Trump administration’s environmental regulation reform. Will you commit to maintaining the Department’s litigating position, as of January 20, 2021, concerning regulatory reform under the Clean Air Act?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning regulations under the Clean Air Act, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

75. Will you commit to maintaining the Department’s litigating position, as of January 20, 2021, concerning regulatory reform under the Clean Water Act?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the Department’s litigating position regarding the Clean Air Act, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

76. Will you commit to defending the Navigable Waters Protection Rule against legal challenge?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the Navigable Waters Protection Rule, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

77. Is it consistent with the rule of law for the Department to decline to defend a final agency action or regulation against legal challenge?

RESPONSE: It is difficult to opine on questions like this without further context, but yes, potentially. While unusual, the Justice Department might decline to defend a final agency action or regulation against legal challenge after careful deliberations if, for example, there was a change in the relevant law in courts around the country or a change in factual circumstances, and if a clear rationale supported the Department's decision. As Attorney General Garland stated, in general, all Justice Department litigation decisions—including decisions about whether to defend rulemakings and other agency actions—should be based on a careful review of the relevant facts and law and consultation with the relevant lawyers at the Department and any interested client agency.

78. When is it appropriate for the Department to decline to defend a final agency action or regulation against legal challenge?

RESPONSE: While unusual, the Justice Department might decline to defend a final agency action or regulation against legal challenge after careful deliberations if, for example, there was a change in the relevant law in courts around the country or a change in factual circumstances, and if a clear rationale supported the Department's decision. As Attorney General Garland stated, in general, all Justice Department litigation decisions—including decisions about whether to defend rulemakings and other agency actions—should be based on a careful review of the relevant facts and law and consultation with the relevant lawyers at the Department and any interested client agency.

79. Will you commit to maintaining the DOJ litigating position, as of January 20, 2021, concerning regulatory reform under the National Environmental Policy Act?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning regulations under the National Environmental Policy Act, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

80. The Coal Ash rule was originally promulgated by the Obama administration, and has been in development and litigation since. Will you commit to maintaining the Department’s litigating position, as of January 20, 2021, on this rule?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the Coal Ash rule, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

81. What is your understanding of the term “environmental equity”?

RESPONSE: My understanding is that environmental equity, like environmental justice, refers to developing and implementing environmental laws that treat all people fairly, regardless of race, color, national origin, or income.

82. Should the enforcement of environmental laws – and the litigation strategy regarding enforcement – depend, at all or in part, on the effect of laws on discrete ethnic or cultural minorities? In what way should it depend?

RESPONSE: If confirmed, I will insist that the Department’s decisions in all enforcement matters are based solely on an evenhanded application of the law to the facts.

83. Many project developers, especially in electricity generation and transmission(which includes the vast amount of natural gas that Texas relies on, and which is still decades away from being replaced by base load renewable energy and storage), are hesitant to make new investments because of uncertainty in permitting process, and inconsistency in Department of Justice environmental enforcement. Do you think enforcement actions should be focused on any one energy sector, or applied evenly across the board and pursuant to existent statutes?

RESPONSE: If confirmed, I will insist that the Department’s decisions in all enforcement matters are based solely on an evenhanded application of the law to the facts.

84. The administration has asserted in response to the Texas transmission crisis “that without new laws and regulations, DOE already has the appropriate tools to address new renewable transmission unilaterally.” This apparently includes the use of eminent domain authority under Section 1222 of EPCA 2005 for new wind and solar development. Do you believe that private property owners in Texas should be subject to a federal “taking,” such that new renewable energy transmission will be free of state-level regulatory requirements?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the Department of Energy’s position on this matter, and therefore am not in a position to comment. If confirmed, I would approach this matter as I

would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

85. The Department of Justice has traditionally not changed its position on a regulation absent new agency rule making. But in *HollyFrontier v. RenewableFuels Association*, EPA announced, by press release, that it was abandoning its long-held position on the Clean Air Act and instead siding with a Tenth Circuit opinion which eviscerated the crucial Small Refinery Exemption program. Do you believe this was appropriate?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the Small Refinery Exemption Program, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

86. Will you commit to following long-standing procedures and the rules of administrative law, including maintaining the Department's position with regard to regulation, absent new agency rulemaking?

RESPONSE: In part because I am not currently at the Department, it is difficult for me to tell which particular procedures and position you are referencing, but if confirmed I will adhere to the law and respect the Department's traditions.

87. In *Garza v. Hargan*, Attorney General Garland joined the en banc order overturning the panel's decision, and ruling that an illegal alien minor had a right to an abortion. Do you agree that the moment a person steps foot in the United States, whether lawfully or unlawfully, and at whatever age, she has a constitutional right to an abortion?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws. Beyond that, I am not familiar with all of the relevant facts and laws concerning this question, and therefore am not in a position to comment. If confirmed, I would approach this question as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to arrive at a full and fair understanding of the facts and the law.

88. Please describe your understanding of the undue burden standard in light of *Russo v. June Medical Services LLC*. Specifically, did it alter the undue burden standard as set forward in *Whole Woman's Health v. Hellerstedt*?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws. I am not familiar with all of the relevant facts and laws concerning these matters, and therefore am not in a position to comment.

89. American public opinion is increasingly coming to favor at least some restrictions on

abortion, and that is reflected by new federal and state legislation. Is it the duty of the Department to uphold and respect this emerging legislation, as with any other?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws.

90. Please describe the holding of *Gonzalez v. Carhart*. Was it correctly decided?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws, consistent with Supreme Court precedent including *Gonzalez v. Carhart*.

91. Across the country, pro-abortion advocates file suit against state laws, alleging that they violate the right to abortion. Are you aware of any of these suits in which you disagree with the advocates on the merits of the lawsuit? If so, which suits, and against which laws?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws. I am not familiar with all of the relevant facts and laws concerning these matters, and therefore am not in a position to comment.

92. Does the Hyde Amendment protect civil rights?

RESPONSE: I understand that the Hyde Amendment imposes certain restrictions on federal funding for abortion.

93. Federal law prohibits discrimination on the basis of sex, race, and disability, among other characteristics. Should a mother be permitted to terminate her pregnancy on the basis of the unborn child's gender?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.

94. You have stated that "disability rights are civil and human rights." Does an unborn child with disabilities have civil or human rights?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.

95. Should a mother be permitted to terminate her pregnancy on the basis of the unborn child's suspected disability?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.

96. Should a mother be permitted to terminate her pregnancy on the basis of the unborn

child's race?

RESPONSE: If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws consistent with Supreme Court precedent.

97. Do you believe that the Equal Rights Amendment, if enacted, would protect a right to abortion?

RESPONSE: My understanding is that the Equal Rights Amendment is the subject of pending litigation involving the Archivist of the United States. As a Department of Justice nominee, it would be inappropriate for me to comment unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and laws.

98. Do you believe that unlawfully setting a building on fire, amidst general rioting, is a violent act?

RESPONSE: It is a serious crime to unlawfully set a building on fire.

99. Is it appropriate for a witness to a crime to consider the race of the perpetrator when deciding whether to provide information to the police or federal authorities?

RESPONSE: As Attorney General Garland stated, it is important that individuals reporting to law enforcement about crimes or potential crimes make those calls on the basis of criminal conduct, not the race of the suspect.

100. Is it racist for a person to call police out of concern over the threatening or unlawful conduct of a person of color?

RESPONSE: Please see my response to Question 99.

101. Do you believe that an individual who attended the Trump rally on January 6, 2021, but did not commit any unlawful or violent act, should be prohibited from holding a political position in the Department of Justice?

RESPONSE: I believe strongly in the First Amendment's protection of lawful, peaceful protests. Like Attorney General Garland, if confirmed, I would follow applicable laws and assess any candidate's fitness for a role in the Department on an individual basis, with the goal of hiring those who are capable and committed to carrying out the Department's mission.

102. Do you believe that an individual who attended a protest during the summer of 2020, but did not commit any unlawful or violent act, should be prohibited from holding a political position in the Department of Justice?

RESPONSE: I believe strongly in the First Amendment's protection of lawful, peaceful protests. Like Attorney General Garland, if confirmed, I would follow applicable laws and

assess any candidate’s fitness for a role in the Department on an individual basis with the goal of hiring those who are capable and committed to carrying out the Department’s mission.

103. Is participation in a riot grounds for termination from the Department of Justice?

RESPONSE: I am not familiar with the details of the Department of Justice’s termination procedures, but I expect that unlawful conduct of any kind may be grounds for termination.

104. You tweeted “#We’re with Portland” in response to the United States bringing in law enforcement to stop violent attacks on a federal courthouse and other federal property. Should the Committee understand this tweet as supporting domestic terrorism by assaulting federal property and federal officers?

RESPONSE: I agree with Lisa Monaco that domestic terrorism must be investigated and prosecuted wherever it comes from. You and I share a desire for both law enforcement accountability and for community safety. I believe we can strike that balance. Violence in any context is unacceptable and I have not condoned violence and never would.

105. If your answer to question 104 is “no,” should the same standard apply to any individuals who stated they support the January 6 rally even after the rioting began, as long as they did not explicitly endorse the violence? If not, why not?

RESPONSE: I agree with Lisa Monaco that domestic terrorism must be investigated and prosecuted wherever it comes from. You and I share a desire for both law enforcement accountability and for community safety. I believe we can strike that balance. Violence in any context is unacceptable and I have not condoned violence and never would.

106. Do you agree that the vast majority of law enforcement personnel are good people who fairly enforce the law without regard to race?

RESPONSE: Yes.

107. The Brookings Institute has stated “‘Defund the police’ means reallocating or redirecting funding away from the police department to other government agencies funded by the local municipality.” Do you agree with this definition? If not, please provide your definition.

108. Do you believe we should “defund the police”?

109. Have you ever supported “defunding the police”?

RESPONSE to Questions 107, 108, and 109: I do not support defunding the police. Throughout my career, I have supported law enforcement, working collaboratively with law enforcement leaders and advocating for more funding for the police where appropriate, including for officer wellness and safety programs, body-worn cameras, and

equipment and data systems upgrades. Based on feedback from law enforcement and other stakeholders, in discussions over many years, I have supported community-based interventions for people with mental illness or substance use disorders, for example, to relieve the burden on law enforcement and to provide alternatives that can keep officers and community members safe. During my time leading the Civil Rights Division I testified before the Senate in support of additional funding for law enforcement funding programs.

I am proud that my nomination has been supported by major law enforcement organizations, including the National Fraternal Order of Police, the National Sheriffs' Association, Major County Sheriffs of America, the Major Cities Chiefs Association, the International Association of Chiefs of Police, the Police Executive Research Forum, the Federal Law Enforcement Officers Association, the National Organization of Black Law Enforcement Executives, the Hispanic American Police Command Officers Association, and the National Association of Women Law Enforcement Executives.

110. Is there rampant and systemic white supremacy in public policy across America?

RESPONSE: Given the history of this country, of slavery, and the long period of Jim Crow, and the ongoing scourge of racial discrimination, I think systemic racism remains very much a live problem in America today. However, I agree with Attorney General Garland that acknowledging the existence of systemic racism in society does not mean that any particular institution or individual is racist.

111. Should chokeholds be categorically banned?

RESPONSE: In my role as President and CEO of the Leadership Conference I advocated the consensus view among civil rights organizations in favor of a ban on chokeholds. I understand that President Biden has supported a ban on chokeholds. With respect to such policy matters, as Attorney General Garland has explained, the Justice Department advances the policies of the President as long as they are consistent with the law.

112. Should racial profiling be categorically banned?

RESPONSE: In my role as President and CEO of the Leadership Conference I advocated the consensus view among civil rights organizations in favor of a ban on racial profiling. I understand that President Biden has supported the George Floyd Justice in Policing Act, which I understand contains a prohibition on racial profiling. With respect to such policy matters, as Attorney General Garland has explained, the Justice Department advances the policies of the President as long as they are consistent with the law.

113. Should Congress or the Department of Justice establish a police misconduct registry?

RESPONSE: In my role as President and CEO of the Leadership Conference I advocated the consensus view among civil rights organizations in favor of creating a national police misconduct registry. I understand that President Biden has supported the George Floyd Justice in Policing Act, which I understand would create a national police misconduct

registry. With respect to such policy matters, as Attorney General Garland has explained, the Justice Department advances the policies of the President as long as they are consistent with the law.

114. Should 18 U.S.C. § 242 be amended to include “reckless” actions?

RESPONSE: In my role as President and CEO of the Leadership Conference I advocated the consensus view among civil rights organizations in favor of amendments to 18 U.S.C. § 242’s *mens rea* requirement. I understand that President Biden has supported the George Floyd Justice in Policing Act, which contains provisions that would amend 18 U.S.C. § 242 to include reckless actions. With respect to such policy matters, as Attorney General Garland has explained, the Justice Department advances the policies of the President as long as they are consistent with the law.

115. Should there be a prohibition on no-knock warrants?

RESPONSE: In my role as President and CEO of the Leadership Conference I advocated the consensus view among civil rights organizations in favor of a ban on no-knock warrants. I understand that President Biden has supported the George Floyd Justice in Policing Act, which contains provisions that that address no-knock warrants. With respect to such policy matters, as Attorney General Garland has explained, the Justice Department advances the policies of the President as long as they are consistent with the law.

116. At your hearing, you stated the following with regard to qualified immunity: “I will say I don’t come in supporting it, elimination, one way or another.” “My duty if confirmed as associate attorney general will be to follow the president’s lead on these kinds of policy issues, so long as they’re consistent with the law.” Was your testimony that you do not have a position with regard to qualified immunity, or that, regardless of your position, you will adhere to the administration’s position?

RESPONSE: In my role as President and CEO of the Leadership Conference I advocated the consensus view among civil rights organizations in favor of eliminating qualified immunity. Proposals to reform qualified immunity present challenging issues and there are not easy answers. Law enforcement officers must be able to do their critical job of keeping our communities safe, and individual officers must be held accountable when misconduct occurs. If confirmed, I would continue to engage with law enforcement, civil rights, and community leaders on these difficult questions. President Biden has called for the government to review qualified immunity as a policy matter, and with respect to such matters, as Attorney General Garland has explained, the Justice Department advances the policies of the President as long as they are consistent with the law.

117. President Biden last month issued an Executive Order blocking the Department of Justice from renewing contracts with privately-operated detention centers. Unlike the Federal Bureau of Prisons, the U.S. Marshals Service does not have its own facilities, and relies heavily on private operators to fulfill its unique mission of serving the federal courts. Please explain why the U.S. Marshals Service should not be allowed to renew its

contracts with private facility operators.

RESPONSE: Because I am not currently at the Department, I am not familiar with the nature of the contracts the U.S. Marshals Service has with privately owned facilities.

118. You stated at the hearing that you have reconsidered your position on the legalization of drugs. You had previously expressed support for decriminalization, as late as 2012. The opioid crisis has claimed the lives of nearly 400,000 people in America since 1999. Please explain when, and why, you changed your position.

RESPONSE: I have never advocated for the legalization or decriminalization of all drugs, and I do not support the legalization or decriminalization of all drugs. In 2012, I coauthored an article that advocated for states to decriminalize and defelonize simple possession “of all drugs, particularly marijuana, and for small amounts of other drugs.” The article discussed how arrest and incarceration do not treat addiction and often make individuals more prone to drug use, and it advocated for alternatives to incarceration to treat addiction. While my position on these issues has evolved, because of my experience working at the Department of Justice and an experience with addiction in my own family, I have never communicated or believed that all drugs should be legal.

Substance use disorder is both a public health problem and a law enforcement problem. President Biden has supported decriminalization of marijuana and ending incarceration for drug use, and I support these policies. If confirmed as Associate Attorney General, I will enforce all federal laws, and I will work with the Attorney General and Deputy Attorney General to protect communities from the harmful effects of drugs.

119. You accused Senator Tim Scott of “playing politics” when he introduced the JUSTICE Act, and said that it would do “nothing to achieve accountability.” Do you stand by this comment?

RESPONSE: I have great respect for Senator Scott’s leadership on criminal justice and police reform issues. Law enforcement officers must be able to do their critical job of keeping our communities safe, and individual officers must be held accountable when misconduct occurs. If confirmed, I would work with leaders and career staff at the Justice Department to review relevant legislative proposals consistent with these principles.

120. Despite your concern that the JUSTICE Act did not go as far as you had wished, do you believe that, on balance, its reforms would have achieved literally “nothing” for minority communities?

RESPONSE: I supported the Justice in Policing Act because it provided a more robust framework for achieving accountability.

121. Will you commit that the Department of Justice will not provide trainings that teach that one race or sex is inherently superior to another race or sex?

RESPONSE: Yes.

122. Will you commit that the Department of Justice will not to provide trainings that teach that an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive?

RESPONSE: On his first day in office, President Biden issued an Executive Order stating that it is the policy of his administration “to advance racial equity for all,” meaning “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, E.O. No. 13985 (Jan. 20, 2021). As part of that Executive Order, President Biden rescinded Executive Order 13950, which related to workplace trainings, and directed all agency heads to consider appropriate actions in response, as consistent with applicable law. If confirmed, I would work with the Attorney General and other Department leaders to support the President’s efforts to advance racial equity, including via proper and lawful trainings, as appropriate.

123. Will you commit that the Department of Justice will not provide trainings that teach that an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex?

RESPONSE: On his first day in office, President Biden issued an Executive Order stating that it is the policy of his administration “to advance racial equity for all,” meaning “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As part of that Executive Order, President Biden rescinded Executive Order 13950, which related to workplace trainings, and directed all agency heads to consider appropriate actions in response, as consistent with applicable law. If confirmed, I would work with the Attorney General and other Department leaders to support the President’s efforts to advance racial equity, including via proper and lawful trainings, as appropriate.

124. Will you commit that the Department of Justice will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

RESPONSE: On his first day in office, President Biden issued an Executive Order stating that it is the policy of his administration “to advance racial equity for all,” meaning “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As part of that Executive Order, President Biden rescinded Executive Order 13950, which related to workplace trainings, and directed all agency heads to consider appropriate actions in response, as consistent with applicable law. If confirmed, I would work with the Attorney General and other Department leaders to support the President’s efforts to advance racial equity, including via proper and lawful trainings, as appropriate.

125. Could training or teaching any of the propositions stated in questions 121-125 be

evidence of hostile work environment in violation of Title VII of the Civil Rights Act?
Please explain.

RESPONSE: If confirmed, I would seek to ensure that all Department actions fully conform with federal law, including Title VII of the Civil Rights Act as applicable.

126. Will you commit to producing, upon request, any and all training materials used by the Department of Justice, so that the public understands what is being taught to the people in charge of enforcing our laws?

RESPONSE: If confirmed, I would pursue the Attorney General's stated goal to have the Department be responsive to congressional requests for information and, if the Department cannot answer a question, to explain why it cannot do so.

127. Is it appropriate for the Department of Justice to use settlements as a means to provide funding to select outside organizations?

RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. I understand the importance of these guardrails and will comply with these regulations. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

128. At your hearing, you agreed on the importance of transparency and congressional oversight. Will you commit to provide a yearly report to the Committee listing every suit settled by the Department of Justice whereby a settlement requires the defendant to pay any amount (excluding customary attorneys' fees and costs) to a third party?

RESPONSE: I have great respect for the oversight role of the Senate Judiciary Committee. If I am confirmed as Associate Attorney General, I will seek to ensure that the Department responds to oversight requests in a timely manner, subject to the Department's longstanding policies and practices that may limit what can be disclosed in response to particular requests.

129. At your hearing, you confirmed you will follow a regulation limiting the ability of the Justice Department to provide funding to non-parties through settlement agreements. But this regulation can be rescinded. Do you support rescinding this regulation?

RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. I understand the importance of these guardrails and will comply with these regulations. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

130. You have stated that consent decrees are a way to effect policy, and urged they can be a vehicle for “institutional change, cultural change, the kind of systemic change that our consent decrees are really aimed at are ones that are going to transform the culture over the long haul.” Given this, do you believe that consent decrees should be subject to notice and comment procedures, as would any other agency policy having the force of law? If not, why not?

RESPONSE: As Attorney General Garland has explained, Congress has authorized the Justice Department to pursue consent decrees, which are sometimes appropriate to ensure compliance with the law. Such agreements are entered and enforced by courts, not promulgated by federal agencies.

131. You strongly opposed the Stop the Settlement Slush Funds Act of 2017 – a bill that would have prohibited the Department of Justice from forcing parties to donate to outside organizations in order to settle a case. Clearly, there is a concern about where that money goes. At a bare minimum, will you commit that if you are confirmed, none of the divisions under your supervision will enter into a settlement that requires payments to any of the groups for whom you previously worked?

RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. I understand the importance of these guardrails. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides. In addition, if I am confirmed as Associate Attorney General, I would review any settlement agreements that require my approval for compliance with Department of Justice requirements. Were a matter to arise that presented a potential conflict, I would seek the advice of career ethics attorneys.

132. The Boston Marathon bomber, Dzhokhar Tsarnaev, murdered three people and injured 264 others with pressure cooker bombs. A court of appeals recently reversed his death sentence, and the Department of Justice appealed to the Supreme Court. Will you advocate for maintaining the Department’s position in the Tsarnaev case?

RESPONSE: If I am confirmed as Associate Attorney General, I will enforce the law. The decision to pursue the death penalty requires the certification of the Attorney General and there is an extensive process at the Justice Department—one that I am familiar with given my prior service at the Civil Rights Division. If confirmed, as I did before, I will look at every case individually on the facts and the law.

133. Even if the appeal is unsuccessful, prosecutors will have the opportunity to again seek the death penalty. Will you advocate for the Department of Justice to seek the death penalty on remand, if necessary?

RESPONSE: If I am confirmed as Associate Attorney General, I will enforce the law. The decision to pursue the death penalty requires the certification of the Attorney General and

there's an extensive process at the Justice Department—one that I am familiar with given my prior service at the Civil Rights Division. If confirmed, as I did before, I will look at every case individually on the facts and the law.

134. What was your involvement with the death penalty during your tenure at the Department of Justice? Please discuss your role in any death penalty matters.

RESPONSE: During my tenure as head of the Civil Rights Division, I oversaw the prosecution of the Dylann Roof matter. The Attorney General made the decision to pursue the death penalty in that case.

135. Do you approve of the Biden administration's recent decision to voluntarily dismiss a suit against Yale University for discrimination against Asian Americans? If you lack sufficient knowledge about the suit, will you commit to reviewing the dismissal in order to determine whether it was in error?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the decision to dismiss the lawsuit against Yale University, and therefore am not in a position to comment. However, in general, a decision to change a litigation position must be carefully considered. If confirmed, I will consult closely with career officials and Department leadership to review litigating positions in a fair and impartial manner, consistent with Department guidelines, to ensure that they are driven by the facts and the law.

136. In 2011, the U.S. Department of Education issued a Dear Colleague Letter to colleges and universities that broadened the definition of sexual harassment and required schools to adopt a lenient "more likely than not" burden of proof when adjudicating claims, among other procedural defects. Should this standard of proof govern?

RESPONSE: My understanding is that these matters are currently the subject of pending litigation. I am not in the Department and cannot comment unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and laws.

137. Are students accused of sexual misconduct entitled to due process?

RESPONSE: Title IX requires that schools provide all parties with a fair process, including both survivors and those accused of sexual misconduct.

138. Will you commit to hiring career attorneys for the Civil Rights Division without regard to ideology?

RESPONSE: Yes. If confirmed, I will make personnel decisions within my purview consistent with federal law, including the civil service laws, and with Departmental policies, and without regard to any prohibited considerations, including ideology.

139. Do you agree that the vast majority of the attorneys in the Civil Rights Division hold

liberal political views? If so, does this easily measurable disparate impacts suggest discriminatory hiring? If not, why not?

RESPONSE: It would not be appropriate for me to speculate about the political views of any Justice Department employees. If confirmed, I will make personnel decisions within my purview consistent with federal law, including the civil service laws, and with Departmental policies, and without regard to any prohibited considerations, including ideology.

140. President Biden has promised to nominate judges “who look like America.” What do you understand this to mean?

RESPONSE: President Biden has been clear that he plans to nominate judges that reflect the rich diversity of our country.

141. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

RESPONSE: If confirmed, I will make personnel decisions within my purview consistent with federal law, including the civil service laws, and with Departmental policies, and without regard to any prohibited considerations.

142. What compelling justification, if any, can be offered for racial discrimination in college admissions?

RESPONSE: The Supreme Court has repeatedly affirmed that universities have a compelling interest in obtaining “the educational benefits that flow from student body diversity,” and that it is permissible to consider race as part of a holistic approach to achieving these goals. *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003). The constitutionality of any such effort depends on the facts and law.

143. In 2019, the attorney general of Michigan announced her new “hate crimes unit” would use the Southern Poverty Law Center’s “hate group” list in law enforcement decisions, and two organizations have filed suit, claiming this violates the First Amendment. Do you believe that the SPLC’s “hate group” list is sufficiently credible that Department of Justice employees may rely on it?

RESPONSE: The Department of Justice’s decisions regarding investigations and prosecutions must be based on a careful review of the specific facts and law of that particular case and must be made in consultation with other Department leaders and career lawyers.

144. The SPLC is currently a member of the Leadership Conference. Does this mean you believe the SPLC is currently a credible organization?

RESPONSE: If confirmed, the Southern Poverty Law Center’s membership in the Leadership Conference will not influence my oversight of the Civil Rights Division. The Department of Justice’s decisions regarding investigations and prosecutions must be based on a careful review of the specific facts and law of each particular case and must be made in consultation with other Department leaders and career lawyers.

145. Will you commit to ensuring that Department of Justice attorneys do not rely in whole, or in objectionable part, on the SPLC’s “hate group” list?

RESPONSE: The Department of Justice’s decisions regarding investigations and prosecutions must be based on a careful review of the specific facts and law of that particular case and must be made in consultation with other Department leaders and career lawyers.

146. Do you agree with the SPLC that the Ruth Institute is a hate group? If so, please explain why.

RESPONSE: The Department of Justice’s decisions regarding investigations and prosecutions must be based on a careful review of the specific facts and law of that particular case and must be made in consultation with other Department leaders and career lawyers.

147. Do you agree with the SPLC that Alliance Defending Freedom is a hate group? If so, please explain why.

RESPONSE: The Department of Justice’s decisions regarding investigations and prosecutions must be based on a careful review of the specific facts and law of that particular case and must be made in consultation with other Department leaders and career lawyers.

148. Do you agree with the SPLC that the Family Research Council is a hate group? If so, please explain why.

RESPONSE: The Department of Justice’s decisions regarding investigations and prosecutions must be based on a careful review of the specific facts and law of that particular case and must be made in consultation with other Department leaders and career lawyers.

149. Under your leadership, the Civil Rights Division investigated and prosecuted employers who discriminated against employees because of their genderidentity. Title IX of the Civil Rights Act prevents sex-based discrimination by any educational program receiving federal funds. Title IX has led to the growth and flourishing of women’s sports. Do biological men possess a physiological advantage compared to biological women in competitive sports?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law. I understand that a number of pending legal challenges concern the rights of transgender individuals to participate in schools’ athletic programs, and that the Department recently withdrew some filings that the prior Administration made in some of those cases. Because I am not in the Department, I have not been privy to any ongoing conversations about such matters.

150. If there is an advantage, what implications, if any, does this have for Title IX?

RESPONSE: Please see my response to Question 149.

151. You have criticized state legislative efforts to protect minors from permanent and serious sex-alteration surgical procedures, what you refer to as “transgender health care.” Further, you have called on the NCAA to relocate youth sporting events from Idaho because the state passed a measure permitting only biological females to participate in female athletic competition. Do you believe that single-sex facilities, such as gyms and spas, should be forced to open same-sex facilities to transgender women, even if it comes at the expense of the privacy interests of biological women?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law.

152. Should the federal government allow individual states to make their own determination as to how to balance fairness to women in sports with respect for gender identity?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law. I understand that a number of pending legal challenges concern the rights of transgender individuals to participate in schools’ athletic programs, and that the

Department recently withdrew some filings that the prior Administration made in some of those cases. Because I am not in the Department, I have not been privy to any ongoing conversations about such matters.

153. Should minors, who may be confused about their gender identity, be permitted to undergo permanent and serious bodily alterations and mutilations?

RESPONSE: A person's gender identity is a highly personal matter; each situation is unique, whether involving a minor or an adult, and any decision to receive associated medical treatment is similarly personal and highly particular to the individual. If I am confirmed as Associate Attorney General, it will not be my duty to proscribe rules for how individual families and persons should address these very personal situations. I will enforce all federal laws, and work to ensure that every person is treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love.

154. Should concerned parents be able to prevent their underage children from obtaining these permanent and serious transition surgeries?

RESPONSE: Please see my response to Question 153.

155. At his hearing, Attorney General Garland stated about Kristen Clarke: she has "views about the civil rights division I have discussed with her and they are inline with my own." Are any of her public views materially different than your views? If so, which views?

RESPONSE: I agree with Attorney General Garland. I have worked with Kristen Clarke, as a fellow civil rights lawyer, for many years. I have the utmost respect for her. If we are both confirmed, I look forward to serving with her as part of the team that Attorney General Garland is going to lead in ensuring that the Department of Justice carries out its critical work for the American people.

156. During your time leading the Civil Rights Division, did you ever overrule career employees?

RESPONSE: Justice Department deliberations are confidential, and it would not be appropriate for me to discuss internal deliberations in connection with this or any other matter I worked on during my prior government service.

157. During your time leading the Civil Rights Division, did you ever overrule career employees with regard to existence of constitutional violations that would serve as a predicate for a consent decree? If so, when?

RESPONSE: Justice Department deliberations are confidential, and it would not be appropriate for me to discuss internal deliberations in connection with this or any other matter I worked on during my prior government service.

158. The Leadership Conference is an advocacy organization that pushes the bounds of existing law. Can you name a single legal position that the Leadership Conference has supported under your tenure that you believe it would be inappropriate for the Department of Justice to adopt or defend?

RESPONSE: If I am confirmed as Associate Attorney General, my mandate will be to enforce the law and Constitution of the United States.

159. Is voter fraud an issue that should be addressed?

RESPONSE: The Justice Department should address all credible allegations of voter fraud.

160. Do you agree with the Baker-Carter Commission's conclusion that "absentee ballots remain the largest source of potential voter fraud"?

RESPONSE: If confirmed, it will be my duty to fully and fairly enforce federal laws, including those protecting the right to vote and election security.

161. Do you agree with the Baker-Carter Commission's conclusion that fraud is particularly imminent where "third-party organizations, candidates, and political party activists" are involved in "handling absentee ballots"?

RESPONSE: If confirmed, it will be my duty to fully and fairly enforce federal laws, including those protecting the right to vote and election security.

162. Have you ever supported a Voter ID law?

RESPONSE: Voter identification laws vary significantly from jurisdiction to jurisdiction and must be reviewed on a case-by-case basis. As Attorney General Garland testified, some may have a discriminatory purpose, and some have no discriminatory purpose. The role of the Justice Department is to enforce federal law, and if confirmed as Associate Attorney General, I would follow the law.

163. Multiple states have passed Voter ID laws. Are you aware of any such laws that you believe are consistent with the Constitution and the Voting Rights Act?

RESPONSE: If confirmed, it will be my duty to fully and fairly enforce federal laws, including those protecting the right to vote and election security.

164. Are there any violations of the Voting Rights Act that should *not* result in the Department of Justice moving to place a jurisdiction under preclearance?

RESPONSE: I am not aware of all the relevant facts concerning this hypothetical, and therefore am not in a position to comment.

165. What do you understand to be the holding of *Rucho v. Common Cause*?

RESPONSE: I understand that in *Rucho v. Common Cause*, the Supreme Court held that partisan gerrymandering claims present political questions beyond the reach of the federal courts.

166. Do you understand the Voting Rights Act to require so-called “cross-over districts”?

RESPONSE: How the Voting Rights Act applies in any given jurisdiction is a fact-intensive inquiry. If confirmed, I will seek to ensure that the Justice Department fully and fairly enforces the law.

167. Do you understand the Voting Rights Act to require so-called “coalition districts”? If so, how?

RESPONSE: How the Voting Rights Act applies in any given jurisdiction is a fact-intensive inquiry. If confirmed, I will seek to ensure that the Justice Department fully and fairly enforces the law.

168. How should the Civil Rights Division determine whether a redistricting decision is race-based?

RESPONSE: Whether a particular redistricting decision is race-based depends on a careful assessment of the relevant facts.

169. Does a disparity in voting turnout among different ethnic or racial groups suggest that these different groups lack equal opportunity to vote?

RESPONSE: How federal laws protecting the right to vote apply in any given election is a fact-intensive inquiry. If confirmed, I will seek to ensure that the Justice Department fully and fairly enforces the law.

170. You have stated regarding Justice Amy Coney Barrett: “This entire rushed process - from selection to confirmation - is illegitimate.” Do you stand by this comment, or do you accept the legitimacy of the Supreme Court as currently constituted? If you now accept the legitimacy of the Supreme Court, when did you change your opinion as to the legitimacy of Justice Barrett’s nomination and confirmation?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. On occasion the organization criticized congressional or committee processes. As the head of the

Leadership Conference, I often communicated the organization’s position on judicial nominees. Justice Barrett has been confirmed to the Supreme Court by this body, and I fully respect her place on the Court.

171. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase or decrease the number of justices on the U.S. Supreme Court?

RESPONSE: President Biden has stated his intent to create a bipartisan commission to study the court system. If confirmed as Associate Attorney General, I would review the issue as appropriate.

172. You opposed the confirmation of Justice Barrett using the hashtag “#OurCourt.” Supreme Court justices must follow the law as it is written; they do not represent any subsets of the population or political parties. To whom does “our” in “#OurCourt” refer?

RESPONSE: “Our” refers to the people of the United States.

173. Given the information in the public domain, do you believe that Brett Kavanaugh sexually assaulted Christine Blasey Ford?

RESPONSE: I have tremendous respect for the Supreme Court and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

174. Will you commit, through the appropriate office at the Department, to fully reviewing and investigating the allegations that Governor Cuomo and/or his staff violated the civil rights of New York senior citizens and later misled the Department of Justice regarding the state government’s actions?

RESPONSE: If confirmed, I will make investigative and enforcement decisions based on the facts and the law, alongside Department leaders and career lawyers.

175. Will you commit to determining whether any criminal laws were violated?

RESPONSE: If confirmed, I will make investigative and enforcement decisions based on the facts and the law, alongside Department leaders and career lawyers.

176. Will you commit to prosecuting attempts to obstruct justice in this case?

RESPONSE: If confirmed, I will make investigative and enforcement decisions based on the facts and the law, alongside Department leaders and career lawyers.

177. Describe your role as President and CEO of the Leadership Conference.

RESPONSE: Since its inception, the Leadership Conference has served as a coalition of civil and human rights organizations, now numbering over 220, that collectively fights for equality and opportunity for all. Communications issued by the Leadership Conference reflect the consensus of a diverse coalition, not necessarily the views of any specific individual or organization, on any given matter. My role as President and CEO, along with other senior Leadership Conference staff, was to foster that consensus among the organizations that had direct interests in any given matter and to communicate and amplify the coalition's positions in the public sphere.

178. The Leadership Conference, like other advocacy groups, takes policy positions. Who has final authority with regard to determining the policy positions of the Leadership Conference?

RESPONSE: The Leadership Conference has eleven task forces organized by issue or topic. Its coalition members join the task forces where their organizations have equities. Final authority to determine a policy position lies with the task force for the specific issue. On occasion an issue may be presented to the board of directors for consideration.

179. By what process does the Leadership Conference arrive at policy decisions?

RESPONSE: The Leadership Conference arrives at policy decisions utilizing its task forces, and occasionally its board, as discussed in my response to Question 178.

180. Does the Leadership Conference have a communications team? If so, what was your role as President and CEO of the Leadership Conference with regard to that team?

RESPONSE: Yes. The Executive Vice President for Communications was on my senior team.

181. During your hearing, you implied that Judge Ada Brown, a federal district court judge in Texas nominated by President Trump, refused to say that *Brown v. Board* is the law of the land. Do you wish to clarify your testimony on that point?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee's record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration's judicial nominees. As the head of the Leadership Conference, I often communicated the organization's position on judicial nominees.

182. During your hearing, Senator Booker stated that in numerous private conversations with you, he has never heard you disparage anyone. We know, however, that you have consistently disparaged political opponents in letters, tweets, and other media, including

using rhetoric that you now claim to regret and seem eager to disavow. This difference between your private conversations with Senator Booker and your public statements is striking. Do you only disparage political opponents in public, or do you adopt a more measured tone when speaking to U.S. Senators?

RESPONSE: My public statements do not amount to consistent disparagement of political opponents. I have regretted my harsh language on social media over the last several years because it does not reflect my lifelong record as a consensus builder. I have a long and demonstrated record of bipartisanship and a history of building coalitions and bringing conservative and liberal voices to the table. At the Civil Rights Division, I worked closely with law enforcement and communities to address police misconduct and build trust. At the Leadership Conference, I also worked across the political spectrum—including with bipartisan members of this Committee—on numerous legislative efforts, including the First Step Act. I believe that my decades long commitment to bipartisanship is why my nomination has been supported by every major law enforcement organization and by Republican leaders like Mark Holden, Grover Norquist, Trey Grayson, and Michael Chertoff, among others. If confirmed, I look forward to having a respectful and collaborative working relationship with members of Congress and all who have business with the Justice Department.

183. Senator Blumenthal, after meeting with you, said that you will bring integrity back to the Department, and you responded by thanking him. Do you agree with Senator Blumenthal's assessment that the Associate Attorney General's office previously lacked integrity?

RESPONSE: I, like Attorney General Garland, do not wish to comment on any prior Department of Justice officials' decisions, and would prefer that my nomination be assessed on the basis of my own record and commitments.

184. Did Claire Murray, the previous AAG, lack integrity? If you believe she served with integrity, please explain why you chose not to defend your immediate predecessor's reputation.

RESPONSE: I, like Attorney General Garland, do not wish to comment on any prior Department of Justice officials' decisions, and would prefer that my nomination be assessed on the basis of my own record and commitments.

185. If what ways did Rachel Brand, another recent AAG, lack integrity? If you believe she served with integrity, please explain why you chose not to defend her reputation?

RESPONSE: I, like Attorney General Garland, do not wish to comment on any prior Department of Justice officials' decisions, and would prefer that my nomination be assessed on the basis of my own record and commitments.

Senator Ben Sasse
Questions for the Record for Ms. Vanita Gupta

1. Do you agree that preserving the integrity of the Department depends not just on resisting politically driven interference in investigations, but also in resisting stretching statutory authorities past their limits to accomplish the parts of a President's agenda that cannot pass through Congress?

RESPONSE: As Attorney General Garland testified, because the Justice Department is part of the Executive Branch, the Department follows the lead of the President on matters of policy so long as that policy is consistent with the law.

2. Is it healthy for the republic for a President to say that he will resort to his pen and phone to get his agenda through against the will of Congress?

RESPONSE: As Attorney General Garland testified, the mere fact that the Executive Branch disagrees with congressional inaction cannot create regulatory authority that would not otherwise exist. But congressional action or inaction can be relevant to the scope of the Executive's authorities, as Justice Jackson explained in his concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-37 (1952).

3. Please list some instances during your previous time in the Department of Justice in which the demands of the law and the facts of a particular situation or case have forced you to reach an answer that did not serve the agenda of an administration in which you served.

RESPONSE: As Attorney General Garland has explained, on policy matters, the Department of Justice follows the lead of the President as long as the policy is consistent with the law. However, the Department has developed powerful norms, policies, and traditions to protect the independence of its prosecutions and investigations. President Biden and Attorney General Garland have emphasized the importance of reaffirming the independence of the Department and making sure that decisions about who to investigate and prosecute are based solely on the law and facts, free from political influence. If confirmed, I will commit to do so.

4. Do you agree that the Chinese Communist Party (CCP) is our greatest geostrategic and ideological adversary on the international stage?

RESPONSE: As Attorney General Garland testified, there is no doubt that China poses threats that the United States must defend against with a whole-of-government response. If confirmed, I will work with other Department leaders and career lawyers on these matters as appropriate.

5. Please familiarize yourself with the Department's China Initiative. In general, how would you evaluate the Department's China Initiative?

RESPONSE: Because I am not currently at the Department, I am not familiar with the details of this initiative. It is my understanding that the initiative falls under the Department's National Security Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

6. Was the Department's China Initiative needed, and if so, why?

RESPONSE: Because I am not currently at the Department, I am not familiar with the details of this initiative. It is my understanding that the initiative falls under the Department's National Security Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

7. What has been the Department's China Initiative's greatest successes?

RESPONSE: Because I am not currently at the Department, I am not familiar with the details of this initiative. It is my understanding that the initiative falls under the Department's National Security Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

8. What has been the Department's China Initiative's most notable failures?

RESPONSE: Because I am not currently at the Department, I am not familiar with the details of this initiative. It is my understanding that the initiative falls under the Department's National Security Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

9. What steps can the Department in concert with other agencies take to convince the venture capital and academic community to take the threat posed by the CCP seriously?

RESPONSE: As Attorney General Garland testified, there is no doubt that China poses threats that the United States must defend against with a whole-of-government response. If confirmed, I will work with other Department leaders and career lawyers on these matters as appropriate.

10. You were a supporter of the FIRST STEP Act, though you argued that it "falls short in many ways," including by not reducing criminal sentences sufficiently. One notable provision of the FIRST STEP Act reduced by five years the mandatory minimum sentence under the Controlled Substances Import and Export Act for using a vessel or aircraft to bring into the country 1 or more kilograms of heroin or 5 or more kilograms of cocaine for individuals with a previous felony drug conviction. How did this provision of the FIRST STEP Act that puts repeat drug felons engaged in international drug trafficking back on the streets faster enhance public safety?

RESPONSE: As the President and CEO of the Leadership Conference, I was proud to work with Democratic and Republican members of Congress toward passage of the First Step Act. If I am confirmed as Associate Attorney, my mandate will be to enforce the laws and Constitution of the United States, including the First Step Act.

11. You described one of my bills, the Born-Alive Abortion Survivors Protection Act, as “designed to spread misinformation about abortion.” How is this bill “designed to spread misinformation about abortion”?

RESPONSE: This statement was made in my capacity as the President and CEO of the Leadership Conference, where I served as an advocate, and often a voice, for the civil rights community. As the head of the Leadership Conference, I often communicated the organization’s positions publicly. However, if confirmed as Associate Attorney General, I would carry out the mandate of the Justice Department, which is to enforce the duly enacted laws of the United States, free from political influence or opinion. I have immense respect for the clear distinction between these roles.

12. You tweeted: “The American criminal-legal system is a stain on our democracy.” Please explain this statement in detail.

RESPONSE: As Attorney General Garland stated, our criminal justice system has contributed to mass incarceration and disparate treatment among communities of color. Like Attorney General Garland, I believe that guaranteeing the promise of fair and impartial enforcement of the law, and addressing the disparate results for communities of color in our justice system, are among the most important issues we face.

13. Does your belief that “[t]he American criminal-legal system is a stain on our democracy” negatively affect your ability to administer the Department of Justice?

RESPONSE: No. Throughout my career I have been honored to work on bipartisan criminal justice reform. The Justice Department’s mandate is to enforce the law, including by ensuring the fair and impartial administration of justice for all. If confirmed, in carrying out that critical work with Department leadership and career staff, my decisions would be driven only by my objective assessment of the relevant facts and applicable law in any given circumstance.

14. Does appointing as the third-ranking official in the Department of Justice someone who has previously asserted that “[t]he American criminal-legal system is a stain on our democracy” help build or erode public confidence in our legal system?

RESPONSE: The Justice Department’s mandate is to enforce the law, including by ensuring the fair and impartial administration of justice for all. If confirmed, in carrying out that critical work with Department leadership and career staff, my decisions would be driven only by my objective assessment of the relevant facts and applicable law in any given circumstance.

15. You described efforts by Sen. Tim Scott to pass the JUSTICE Act as “Republicans . . . playing politics.” Please explain this statement in detail.

RESPONSE: I have great respect for Senator Scott’s leadership on criminal justice and police reform issues. Law enforcement officers must be able to do their critical job of keeping our communities safe, and individual officers must be held accountable when misconduct occurs. If confirmed, I would work with leaders and career staff at the Justice Department to review relevant legislative proposals consistent with these principles.

16. You asserted that the JUSTICE Act “does nothing to achieve accountability.” Please provide a section-by-section analysis of how the bill “does nothing to achieve accountability.”

RESPONSE: I supported the Justice in Policing Act because it provided a more robust framework for achieving accountability.

17. During Justice Brett Kavanaugh’s confirmation hearings, you tweeted: “Kavanaugh lied today.” Do you still believe that Justice Kavanaugh lied in his testimony before Congress?

18. If confirmed, will your past accusation that Justice Kavanaugh lied under oath to Congress negatively affect the Department’s ability to argue credibly before the Supreme Court?

19. Does the President’s nomination of someone to the third-ranking position at the Department of Justice who accused a Supreme Court Justice of lying under oath to Congress negatively affect public confidence in our legal system?

20. You tweeted: “Just finished speaking at the #StopKavanaugh rally to say once again: With Kavanaugh’s nomination, our democracy is at stake. . . . And our lives are at stake.” How was “our democracy at stake” with the outcome of Justice Kavanaugh’s nomination?

21. Has our democracy been harmed by the confirmation of Justice Kavanaugh?

22. How were “our lives at stake” with the outcome of Justice Kavanaugh’s nomination?

23. Have our lives been harmed by the confirmation of Justice Kavanaugh?

RESPONSE TO QUESTIONS 17-23: I have tremendous respect for the Supreme Court and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body and I have full respect for his place on the Court.

24. In opposition to the nomination of Justice Amy Coney Barrett, you tweeted: “Our rights are at stake. Our democracy is at stake. And let’s be really clear: A vote on any nominee right now is a vote to take away health care from millions and a vote to roll back reproductive freedom, voting rights, and racial justice. We won’t let it happen. #OurCourt.” How were “our rights . . . at stake” with the outcome of Justice Barrett’s nomination?
25. Have our rights been harmed by the confirmation of Justice Barrett?
26. How was “our democracy . . . at stake” with the outcome of Justice Barrett’s nomination?
27. Has our democracy been harmed by the confirmation of Justice Barrett?
28. How was the confirmation vote on Justice Barrett’s nomination “a vote to take away health care from millions and a vote to roll back reproductive freedom, voting rights, and racial justice”?
29. Has “racial justice” been harmed by the confirmation of Justice Barrett?

RESPONSE TO QUESTIONS 24-29: I have tremendous respect for judges and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees. The Leadership Conference did not oppose the vast majority of President Trump’s nominees. Justice Barrett was confirmed to the Supreme Court by this body and I have full respect for her place on the Court.

30. In your letter in opposition to the nomination of Ryan Bounds to the U.S. Court of Appeals for the Ninth Circuit, you argued that Mr. Bounds’s college writings were a legitimate basis for opposition to his nomination despite his subsequent disavowal of those writings. Should you and all other nominees be held to the same standard when it comes to the past statements?

RESPONSE: I believe that all nominees should be evaluated on their entire records.

Senator Josh Hawley
Questions for the Record

Vanita Gupta
Nominee, U.S. Associate Attorney General

1. In a 2012 post on the ACLU website coauthored with Ezekiel Edwards, you wrote that “[s]tates should decriminalize simple possession of all drugs, particularly marijuana, and for small amounts of other drugs.” When Sen. Cornyn asked during your March 2021 hearing whether you “advocate decriminalization of all drugs,” you testified in response, “No, Senator, I do not.” Have your views on drug decriminalization changed between 2012 and the present?

RESPONSE: I have never advocated for the decriminalization of all drugs, and I do not support the decriminalization of all drugs. In 2012, I coauthored an article that advocated for states to decriminalize and defelonize simple possession “of all drugs, particularly marijuana, and for small amounts of other drugs.” The article discussed how arrest and incarceration do not treat addiction and often make individuals more prone to drug use, and it advocated for alternatives to incarceration to treat addiction. While my position on these issues has evolved, because of my experience working at the Department of Justice and an experience with addiction in my own family, I have never communicated or believed that all drugs should be legal.

Substance use disorder is both a public health problem and a law enforcement problem. President Biden has supported decriminalization of marijuana and ending incarceration for drug use, and I support these policies. If confirmed as Associate Attorney General, I will enforce all federal laws, and I will work with the Attorney General and Deputy Attorney General to protect communities from the harmful effects of drugs.

2. If your views on drug decriminalization have changed between 2012 and the present, please explain why.

RESPONSE: I have never advocated for the decriminalization of all drugs, and I do not support the decriminalization of all drugs. In 2012, I coauthored an article that advocated for states to decriminalize and defelonize simple possession “of all drugs, particularly marijuana, and for small amounts of other drugs.” The article discussed how arrest and incarceration do not treat addiction and often make individuals more prone to drug use, and it advocated for alternatives to incarceration to treat addiction. While my position on these issues has evolved, because of my experience working at the Department of Justice and an experience with addiction in my own family, I have never communicated or believed that all drugs should be legal.

Substance use disorder is both a public health problem and a law enforcement problem. President Biden has supported decriminalization of marijuana and ending incarceration for drug use, and I support these policies. If confirmed as Associate Attorney General, I

will enforce all federal laws, and I will work with the Attorney General and Deputy Attorney General to protect communities from the harmful effects of drugs.

3. In your written testimony in June 2020 before this Committee, you testified that “it is . . . critical for state and local leaders to heed calls from Black Lives Matter and Movement for Black Lives activists to decrease police budgets and the scope, role, and responsibility of police in our lives.” When Sen. Durbin asked you directly whether you “support defunding the police,” you testified in response, “I do not support defunding the police.” Have your views on decreasing police budgets changed between June 2020 and the present?

RESPONSE: No. I do not support defunding the police. Throughout my career, I have supported law enforcement, working collaboratively with law enforcement leaders and advocating for more funding for the police where appropriate, including for officer wellness and safety programs, body-worn cameras, and equipment and data systems upgrades. Based on feedback from law enforcement and other stakeholders, in discussions over many years, I have supported community-based interventions for people with mental illness or substance use disorders, for example, to relieve the burden on law enforcement and to provide alternatives that can keep officers and community members safe. During my time leading the Civil Rights Division I testified before the Senate in support of additional funding for law enforcement funding programs.

I am proud that my nomination has been supported by major law enforcement organizations, including the National Fraternal Order of Police, the National Sheriffs’ Association, Major County Sheriffs of America, the Major Cities Chiefs Association, the International Association of Chiefs of Police, the Police Executive Research Forum, the Federal Law Enforcement Officers Association, the National Organization of Black Law Enforcement Executives, the Hispanic American Police Command Officers Association, and the National Association of Women Law Enforcement Executives.

4. If your views on decreasing police budgets have changed between 2012 and the present, please explain why.

RESPONSE: I do not support, and have never supported, defunding the police. I have instead talked about the importance of investments in communities that promote public safety. Indeed my past record shows that I have advocated for increased funding for law enforcement.

5. If you are confirmed as Associate Attorney General, do you intend to faithfully use Federal law enforcement resources to defend Federal property against violent rioters, without prejudice to whether those rioters hold radical left-wing or right-wing views?

RESPONSE: Violence is never appropriate. The First Amendment only protects peaceful protests, and the Justice Department must enforce the law and protect communities from violence regardless of who engages in it.

6. If you are confirmed as Associate Attorney General, do you intend to faithfully enforce the federal ban on partial-birth abortions?

RESPONSE: If I am confirmed as Associate Attorney General, I commit to enforcing the laws of the United States.

7. If you are confirmed as Associate Attorney General, do you intend to faithfully enforce the Religious Freedom Restoration Act as it is written today?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution's First Amendment and in other federal laws, including the Religious Freedom Restoration Act. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department's Civil Rights Division. In addition to overseeing the Division's enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. If confirmed, I will faithfully uphold all rights guaranteed by the Constitution and other federal laws—including religious freedoms—to the fullest extent of the law.

8. If you are confirmed as Associate Attorney General, would you independently recommend or advise that the Department of Justice support legislative or executive actions that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution's First Amendment and in other federal laws. If confirmed, I will seek to ensure that the Department of Justice enforces laws that protect religious liberty, including the Religious Freedom Restoration Act. And if I were asked to consider an amendment to the statute, I would carefully review all of the relevant legal and policy issues, as well as consult Department leaders and career staff, to help formulate the Department's position.

9. If you are confirmed as Associate Attorney General, would you independently recommend or advise that the Department of Justice suspend Special Counsel John Durham's investigation into the Crossfire Hurricane operation?

RESPONSE: I am not aware of the current status of Mr. Durham's investigation beyond what the media has reported. Decisions about the investigation ultimately fall to Attorney General Garland, and I would follow his lead on this matter.

10. If you are confirmed as Associate Attorney General, would you independently recommend or advise that the Department depart from the reasoned analysis set forth in OLC's January 6, 2020 opinion *Ratification of the Equal Rights Amendment*, which is in

accord with both statements made by the late Justice Ginsburg and OLC's October 31, 1977 opinion *Constitutionality of Extending the Time Period for Ratification of the Proposed Equal Rights Amendment?*

RESPONSE: My understanding is that the Equal Rights Amendment is the subject of pending litigation involving the Archivist of the United States. As a Department of Justice nominee, it would be inappropriate for me to comment unless and until I am confirmed by the Senate and can be fully briefed on the relevant facts and law.

Nomination of Vanita Gupta to be Associate Attorney General of the United States
Questions for the Record
Submitted March 12, 2021

QUESTIONS FROM SENATOR COTTON

1. During your hearing, Senator Tillis asked you about a tweet you posted on February 24, 2020. In that tweet, you said, “Please understand what @senatemajldr [Senator McConnell] is prioritizing this week: he’s moving forward on two partisan anti-abortion bills & more lifetime federal judges instead of holding votes on all of the important civil& human rights legislation already passed by the House. We won’t forget.” As Senator Tillis pointed out, the two bills were not partisan, but were bipartisan. One of the two bills would have required doctors to provide medical care to children born alive after failed abortions, and the other bill would have made it a criminal offense to perform an abortion 20 weeks after fertilization. Senator Tillis asked you about your position on these bills, and you answered that your tweet was merely “giving voice to” concerns about other bills not moving forward. You did not answer the question. One of those twobills that you criticized was S. 311, the Born-Alive Abortion Survivors Protection Act, which would have required that doctors exercise the proper degree of care for a child who is born alive after a failed abortion. Should a doctor provide medical care to a child who has been born alive after a failed abortion?

RESPONSE: *Roe v. Wade* is established precedent that the Supreme Court has reaffirmed many times. If confirmed as Associate Attorney General my duty will be to enforce the Constitution and other federal laws.

2. During your hearing, Senator Tillis asked you about a tweet you posted on February 24, 2020. In that tweet, you said, “Please understand what @senatemajldr [Senator McConnell] is prioritizing this week: he’s moving forward on two partisan anti-abortion bills & more lifetime federal judges instead of holding votes on all of the important civil & human rights legislation already passed by the House. We won’t forget.” One of those two bills that you criticized was S. 3275, the Pain-Capable Unborn Child Protection Act, which would have prohibited doctors from performing abortions on unborn children once the child has reached the age—20 weeks after fertilization—where he or she can feel pain. Should doctors be allowed to perform abortions on unborn children whose stage of development allows them to feel pain?

RESPONSE: *Roe v. Wade* is established precedent that the Supreme Court has reaffirmed many times. If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws.

3. During your hearing, Senator Cruz asked you whether it is permissible for the government to prohibit partial-birth abortion. You did not answer that question, instead saying that your duty, “if confirmed, will be to federal laws and the Constitution. *Roe v. Wade* is established precedent and has been reaffirmed numerous times by the courts, and [your] duty will be to enforce the federal laws and the Constitution.” Under federal law and the Constitution, do you believe that it is permissible for the government to

prohibit partial-birth abortion?

RESPONSE: *Roe v. Wade* is established precedent that the Supreme Court has reaffirmed many times. If confirmed as Associate Attorney General, my duty will be to enforce the Constitution and other federal laws.

4. Last year, in the midst of the pandemic, Congress passed the bipartisan CARES Act, which included the Paycheck Protection Program, or PPP. The PPP was designed to help struggling small businesses and nonprofit organizations by giving them access to low-cost loans to stay afloat and keep paying their employees during the pandemic. This program was administered by the Small Business Administration. The CARES Act and its implementing rules explicitly precluded entities such as Planned Parenthood affiliates from receiving these loans. It was well-publicized at the time that the CARES Act did not allow Planned Parenthood affiliates to utilize these loans, and Planned Parenthood itself complained that they were not allowed PPP access. Nevertheless, Planned Parenthood affiliates reportedly applied for and received \$80 million in PPP loans in violation of the law. It appears these affiliates may have fraudulently self-certified they were eligible for these loans. Last year, I and more than 20 of my Senate colleagues asked the Justice Department to investigate the fraudulent dispersal of these loans. If Planned Parenthood affiliates engaged in fraud to obtain these loans, would that be wrong?

RESPONSE: The Department must vigorously enforce all laws that protect against fraud and abuse. Because I am not presently at the Department, I am not aware of all the relevant facts, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

5. Last year, in the midst of the pandemic, Congress passed the bipartisan CARES Act, which included the Paycheck Protection Program, or PPP. The PPP was designed to help struggling small businesses and nonprofit organizations by giving them access to low-cost loans to stay afloat and keep paying their employees during the pandemic. This program was administered by the Small Business Administration. The CARES Act and its implementing rules explicitly precluded entities such as Planned Parenthood affiliates from receiving these loans. It was well-publicized at the time that the CARES Act did not allow Planned Parenthood affiliates to utilize these loans, and Planned Parenthood itself complained that they were not allowed PPP access. Nevertheless, Planned Parenthood affiliates reportedly applied for and received \$80 million in PPP loans in violation of the law. It appears these affiliates may have fraudulently self-certified they were eligible for these loans. Last year, I and more than 20 of my Senate colleagues asked the Justice Department to investigate the fraudulent dispersal of these loans. If Planned Parenthood affiliates engaged in fraud to obtain these loans, that could trigger both civil and criminal penalties. If you are confirmed as Associate Attorney General, will you commit to fully investigating these fraudulent loans and prosecuting the perpetrators to the fullest extent of the law?

RESPONSE: The Department must vigorously enforce all laws that protect against fraud and abuse. If confirmed, I will make decisions about pending and potential investigations based on the facts and the law, without regard to partisan or other improper considerations.

6. During your hearing, you stated that *Heller v. D.C.* “is the law of the land and [you] will enforce *Heller* as decided by the Supreme Court.” Do you believe that the Supreme Court reached the right decision in *Heller*?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

7. During your hearing, you stated that *Heller v. D.C.* “is the law of the land and [you] will enforce *Heller* as decided by the Supreme Court.” If confirmed, will you seek to challenge *Heller* or urge the Supreme Court to reconsider that decision, if given the opportunity?

RESPONSE: If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

8. During your hearing, you stated that *Heller v. D.C.* “is the law of the land and [you] will enforce *Heller* as decided by the Supreme Court.” Please describe what you view as the core holding of the *Heller* case, and any limits you believe the *Heller* case imposes on the Department’s ability to regulate firearms.

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

9. Prior to the Supreme Court’s opinion in *Heller v. District of Columbia*, did you think that Washington, D.C.’s former ban on handgun possession in the home for personal defense was allowable under the Second Amendment? Why or why not?

RESPONSE: As a civil rights attorney the Constitution has been my guiding light. If I am confirmed as Associate Attorney General, any opinions or legal advice I might give on this subject would be based solely on the facts and the law, and not on any other consideration.

10. Firearms sales in the United States are occurring at a record pace, with more than 21 million background checks for gun purchases reported last year. In 2019, the Department of Justice released the first implementation report regarding the *Fix NICS Act*, in which the Department detailed improved compliance by state and federal agencies, resulting in faster and more accurate background checks for gun purchasers. Nonetheless, some have suggested that the government should use delays in background check results to prevent individuals from purchasing guns for undefined periods of time even if they have not been found to be ineligible. Do you believe that the Bureau of Alcohol, Tobacco, Firearms, and Explosives has regulatory authority under current law to require that certain individuals without a NICS denial have their firearm sale delayed indefinitely?

RESPONSE: Because I am not presently at the Department I am not aware of all the relevant facts concerning these matters, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

11. Modern Sporting Rifles (MSRs) are one of the most popular types of firearms sold today. MSRs are semi-automatic firearms, which only fire a single round with each pull of the trigger. Do you believe that President Biden has the authority under existing law to ban the sale or possession of MSRs without Congress?

RESPONSE: Because I am not presently at the Department I am not aware of all the relevant facts concerning these matters, and therefore am not in a position to comment. If confirmed, I would approach this matter as I would any other, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

12. You have previously spoken about your support for the *Equality Act*, currently introduced as H.R. 5. During your hearing, you said that you support the *Religious Freedom Restoration Act* (RFRA), which was passed into law in 1993, but you refused to answer whether you support H.R. 5's repeal of religious liberty protections contained in RFRA. You said, that, "if confirmed as associate attorney general, [your] duty will be to enforce laws to protect religious liberty and the anti-discrimination laws that the Justice Department must enforce." Do you personally support H.R. 5's repeal of religious liberty protections contained in RFRA?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution's First Amendment and in other federal laws, including the Religious Freedom Restoration Act. I have long worked to promote religious liberty, and I

made that a priority when I led the Justice Department’s Civil Rights Division. If confirmed, enforcing these protections will be a priority.

13. Do you interpret the *Religious Freedom Restoration Act* (RFRA) as it currently exists to protect religious institutions, or institutions with a religious purpose, that would segregate individuals based on biological sex in public accommodations? For example, do you believe that RFRA would protect from a discrimination claim a Catholic women’s shelter that chooses to house only those who are born as biological women?

RESPONSE: The Religious Freedom Restoration Act (RFRA) is an important protection for religious liberty that prevents the federal government from substantially burdening religious exercise unless the government has a compelling interest and the restriction is the least restrictive means of furthering that compelling governmental interest. Thus, like other federal laws, any application of RFRA will depend on a detailed analysis of the facts and circumstances. If confirmed, I will work alongside Department leaders and career staff to help ensure that the federal government honors its obligations under RFRA.

14. You repeatedly stated during your hearing that, if confirmed, part of your job will be to enforce the law. Part of your job if you are confirmed will also be to advise your superiors, including Attorney General Garland and President Biden, not only on legal matters but on policy matters. If you are confirmed, would you advise President Biden to support the *Equality Act’s* (H.R. 5) repeal of religious liberty protections contained in RFRA?

RESPONSE: The Justice Department regularly reviews and provides technical assistance concerning proposed legislation. If confirmed, I look forward to reviewing any proposed legislation, including the Equality Act, and, in consultation with Department leadership and career attorneys, helping determine the Department’s official position.

15. Is the First Amendment right to one’s own religious beliefs and expression of those beliefs a fundamental right?

RESPONSE: The Supreme Court has recognized that “the free exercise of religion” is “[u]nquestionably” a “fundamental constitutional right.” *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974).

16. Is the First Amendment right to one’s own religious beliefs and expression of those beliefs contingent on whether others may find those beliefs offensive?

RESPONSE: The First Amendment protects the free exercise of religion. Individuals may choose their religious beliefs without government interference, and that right is not contingent upon whether others find those beliefs offensive.

17. Should students at colleges and universities be discriminated against because of their sincerely held religious beliefs, regardless of whether they are Christian, Jewish,

Muslim, Hindu, or something else?

RESPONSE: No.

18. If you are confirmed as Associate Attorney General, will you commit to defending the religious freedoms of college students—and all Americans—to the fullest extent of the law?

RESPONSE: Yes. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department’s Civil Rights Division. In addition to overseeing the Division’s enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. If confirmed, I will uphold all rights guaranteed by the Constitution and other federal laws—including religious freedoms—to the fullest extent of the law.

19. The Department of Education has two rules (34 C.F.R. §§ 75.500(d) and 76.500(d)) that are designed to protect religious student groups from discrimination by any public college administrators due to the student groups’ sincerely-held religious beliefs, speech, and leadership standards. Do you believe that it is important that students of all faiths feel that their religious freedoms are respected by any public college receiving federal grants?

RESPONSE: Yes. Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution’s First Amendment and in other federal laws. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department’s Civil Rights Division. No student should be subject to unlawful discrimination on the basis of their religion.

20. The Department of Education has two rules (34 C.F.R. §§ 75.500(d) and 76.500(d)) that are designed to protect religious student groups from discrimination by any public college administrators due to the student groups’ sincerely-held religious beliefs, speech, and leadership standards. If you are confirmed as Associate Attorney General, will you commit to vigorously defend these rules against court challenges?

RESPONSE: In general, the Department of Justice’s legal defense of regulations issued by another agency is guided by close consultation with the client agency and a careful review of the facts and the law. If I am confirmed as Associate Attorney General and these rules are challenged in court, I would follow that same approach here.

21. During your hearing, I asked you about your time at the ACLU from 2006-2014. Specifically, I asked you about a statement from the ACLU Delaware website in 2010, which contained, in response to the question, “Why are you in favor of child porn?”, the following statement: “*The ACLU does not support pornography or child porn. However,*

we do oppose virtually all forms of censorship. Possessing certain books or films, even pornographic ones, should not make one a criminal. Once society starts censoring 'bad or offensive' ideas, it becomes very difficult to draw the line. As the saying goes, 'one man's art is another man's pornography.' As for child pornography, the ACLU supports the right of the government to prosecute the makers of child pornography for exploiting minors." I asked you whether you had expressed disagreement with that statement at the time, and you responded that "the structure of the ACLU is a rather Byzantine one where board of affiliates and the like control the policy decisions of state affiliates." Regardless of whether you had veto authority over the state ACLU chapters, did you express disagreement with the child pornography statement at the time?

RESPONSE: I do not recall ever hearing of this statement before you raised it at my hearing.

22. The ACLU Delaware statement regarding child pornography that I referenced in the hearing also appeared verbatim on other ACLU state chapter websites during your tenure at the ACLU, commonly presented in a document entitled, "Tough Questions About ACLU Positions," with only the state logo switched out from one chapter's copy to the next. This suggests that there was some sort of centralized development and distribution of this statement. During your tenure at the ACLU, did you ever see this document?

RESPONSE: No.

23. Did the "Tough Questions About ACLU Positions" document undergo any development at the national ACLU organization during your tenure?

RESPONSE: I did not know this statement was issued at the time, and I had not seen it.

24. During your tenure at the ACLU, did you at any time speak with any of your colleagues or other ACLU employees, either at the national level or within state chapter organizations, about the ACLU's position or the positions of state chapter organizations on decriminalizing the possession of child pornography?

RESPONSE: No.

25. You have spoken often about your support for the use of consent decrees to force reform on police departments, your opposition to the decline of consent decrees use during the Trump administration, and your own, extensive use of consent decrees when you previously served at the Department of Justice. You have also spoken about being a "consensus builder," and have claimed that you seek agreement that results in law enforcement agencies willingly agreeing with the Department of Justice to implement reforms outlined in consent decrees. If a state or local law enforcement agency is willing to implement a particular reform, does it require a court-enforced consent decree to do so, or would it be able to implement the same reforms on its own?

RESPONSE: A law enforcement agency may be well-positioned to implement reforms without a consent decree. When I stepped down from my position at the Department in 2017, there were 14 police department consent decrees in a nation of over 17,000 police departments. The vast majority of police agencies that engage in reform do so without a consent decree. The Justice Department promotes policing best practices through many tools including grantmaking, technical assistance, and research. As Attorney General Garland has explained, Congress has authorized the Justice Department to pursue consent decrees, which are sometimes appropriate to ensure constitutional policing. I agree with Attorney General Garland that it is important for the Department to consider all tools at its disposal when tailoring resolutions.

26. To the extent that you believe law enforcement agencies are unable to implement their own desired reforms without a consent decree, what are the obstacles to such implementation and how does having a consent decree, either with the Department of Justice or with some other entity, remove those obstacles?

RESPONSE: As Attorney General Garland has explained, Congress has authorized the Justice Department to pursue consent decrees, which are sometimes appropriate to ensure constitutional policing. I agree with Attorney General Garland that it is important for the Department to consider all tools at its disposal when tailoring resolutions.

27. During your previous tenure at the Department of Justice, you were involved in multiple consent decrees involving state and local law enforcement agencies. In any of those cases, did you decide to pursue or approve a consent decree over the objections of career officials at the Department of Justice? If so, please list all such cases.

RESPONSE: Justice Department deliberations are confidential, and it would be not be appropriate for me to discuss deliberations within the Department.

28. During your previous tenure at the Department of Justice, you were involved in multiple consent decrees involving state and local law enforcement agencies. In any of those cases, did you decide to pursue or approve a consent decree after career officials at the Department of Justice recommended a finding that there was not, in fact, a “pattern or practice” of constitutional violations? If so, please list all such cases.

RESPONSE: Justice Department deliberations are confidential, and it would be not be appropriate for me to discuss deliberations within the Department.

29. Is “structural racism,” on its own, sufficient to justify the imposition of a consent decree to require reform from a police department?

RESPONSE: The law enforcement pattern-or-practice misconduct statute provides that “[i]t shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,” and authorizes the

Attorney General to “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice” when the Attorney General has reasonable cause to believe that a violation has occurred. 34 U.S.C. § 12601. If confirmed as Associate Attorney General, I will review the facts of any matter that comes to me under this or any authority to ensure compliance with the law. The Department negotiates a consent decree after career lawyers and investigators have made public findings detailing a pattern or practice of unconstitutional policing.

30. On June 26, 2020, you tweeted that “[r]ace underlies every argument against D.C. statehood.” Do you believe that all opposition to extending statehood to the District of Columbia is based on racism?

RESPONSE: No.

31. On June 26, 2020, you tweeted that “[r]ace underlies every argument against D.C. statehood.” Is there any indication in historical records that the Framers of the Constitution added the federal enclave clause due to racial prejudice? If so, please list any such historical indications.

RESPONSE: As Attorney General Garland explained and I testified, acknowledging systemic racism in society does not mean that any particular institution or individual is racist.

32. Is it possible for individuals to oppose extending statehood to the District of Columbia for reasons that have nothing to do with race?

RESPONSE: Yes.

33. On January 20, 2021, President Biden issued an “Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” Do you believe that, as used in that Executive Order, the concept of “equity” is different than the concept of “equality”? If so, please list the differences between the two terms.

RESPONSE: In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, E.O. No. 13985 (Jan. 20, 2021), President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As Attorney General Garland has observed, that definition aligns with bedrock legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

34. Do you believe that “equality” refers to providing people with the same opportunity, or the same outcomes?

RESPONSE: In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, E.O. No. 13985 (Jan. 20,

2021), President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As Attorney General Garland has observed, that definition aligns with bedrock legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

35. Do you believe that “equity” refers to providing people with the same opportunity, or the same outcomes?

RESPONSE: In his Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, E.O. No. 13985 (Jan. 20, 2021), President Biden defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.” As Attorney General Garland has observed, that definition aligns with bedrock legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

36. Do you believe that Americans ought to be treated differently based on the color of their skin?

RESPONSE: If I am confirmed, I will seek to ensure that Department actions abide by the laws and Constitution of the United States, including bans on unlawful discrimination on the basis of race.

37. Do you believe that the Constitution allows the government to treat Americans differently based on the color of their skin?

RESPONSE: If I am confirmed, I will seek to ensure that Department actions abide by the laws and Constitution of the United States, including bans on unlawful discrimination on the basis of race.

38. Should the enforcement of the law be race-neutral, or should law enforcement be based even in part on the race of the perpetrator?

RESPONSE: If confirmed, I would faithfully carry out the Department’s responsibility to fairly and impartially administer justice for all Americans.

39. In a 2005 article in *Fordham Law Review*, you described an “insidious veneer” attached to various “code words and mottos” such as “equal justice for all.” You also suggested that such “code words that once expressed the hopes and aspirations of the civil rights movement have now been distorted and redefined by politically motivated activists.” Do you believe that “equal justice for all” is a “politically motivated” concept?

RESPONSE: No.

40. For what do you believe “equal justice for all” is code?

RESPONSE: Equal opportunity is the bedrock of American democracy, and our diversity is one of our country's greatest strengths. It is the mandate of the Justice Department to ensure equal justice under law, and that would be my mandate if confirmed.

41. What do you believe "equal justice for all" should mean?

RESPONSE: Equal opportunity is the bedrock of American democracy, and our diversity is one of our country's greatest strengths. It is the mandate of the Justice Department to ensure equal justice under law, and that would be my mandate if confirmed.

42. In a 2005 article in *Fordham Law Review*, you described an "insidious veneer" attached to various "code words and mottos" such as "the rule of law." You also suggested that such "code words that once expressed the hopes and aspirations of the civil rights movement have now been distorted and redefined by politically motivated activists." Do you believe that "rule of law" is a "politically motivated" concept?

RESPONSE: No.

43. For what do you believe "the rule of law" is code?

RESPONSE: I am committed to the rule of law and to seeking equal justice under law. As I stated at my hearing, our criminal laws must be neutrally enforced. In this article I was discussing the importance of recognizing and naming racial bias in our criminal justice system.

44. What do you believe "the rule of law" should mean?

RESPONSE: I am committed to the rule of law and to seeking equal justice under law. If confirmed, I will enforce the law without regard to politics or partisanship.

45. In a 2005 article in *Fordham Law Review*, you described an "insidious veneer" attached to various "code words and mottos" such as "equal protection." You also suggested that such "code words that once expressed the hopes and aspirations of the civil rights movement have now been distorted and redefined by politically motivated activists." Do you believe that "equal protection" is a "politically motivated" concept?

RESPONSE: No.

46. For what do you believe "equal protection" is code?

RESPONSE: I am committed to the rule of law and to seeking equal justice under law. Our criminal laws must be neutrally enforced. In this article I was discussing the importance of recognizing and naming racial bias in our criminal justice system.

47. What do you believe "equal protection" should mean?

RESPONSE: I am committed to the rule of law and to seeking equal justice under law. If confirmed, I will enforce the law without regard to politics or partisanship.

48. In a 2005 article in *Fordham Law Review*, you described an “insidious veneer” attached to various “code words and mottos” such as “colorblindness.” You also suggested that such “code words that once expressed the hopes and aspirations of the civil rights movement have now been distorted and redefined by politically motivated activists.” Do you believe that “colorblindness” is a “politically motivated” concept?

RESPONSE: No.

49. For what do you believe “colorblindness” is code?

RESPONSE: I am committed to the rule of law and to seeking equal justice under law. In this article I was discussing the importance of recognizing and naming racial bias in our criminal justice system.

50. What do you believe “colorblindness” should mean?

RESPONSE: I am committed to the rule of law and to seeking equal justice under law. If confirmed, I will enforce the law without regard to politics or partisanship.

51. In a 2005 article in the *Fordham Law Review*, you said that the “distort[ions] and redefin[itions] by politically motivated activists” of “such code words and mottos as ‘the rule of law,’ ‘colorblindness,’ ‘equal justice for all,’ and ‘equal protection’ . . . is aimed at rolling back the gains [of the civil rights movement].” You added that “[t]his will only be more the case as our courts become increasingly conservative,” as though so-called “conservative” judges are “aim[ing] at rolling back the gains [or the civil rights movement].” Do you believe that “conservative” judges are attempting to “roll back” civil rights?

RESPONSE: In this article I was discussing the importance of recognizing and naming racial bias in our criminal justice system. I have tremendous respect for, and I take very seriously, the independence and integrity of the federal judiciary.

52. You tweeted on October 25, 2020, “A vote to confirm Amy Coney Barrett is a vote against civil and human rights. #BlockBarrett”. While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Justice Barrett is opposed to civil and human rights?

RESPONSE: I have tremendous respect for judges and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it

provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees. The Leadership Conference did not oppose the vast majority of President Trump’s nominees. I have tremendous respect for the Supreme Court. Justice Barrett was confirmed to the Supreme Court by this body and I have full respect for her place on the Court.

53. You tweeted on October 26, 2020, “A vote to confirm Amy Coney Barrett is a vote against civil and human rights – plain and simple.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that senators who voted to confirm Justice Barrett’s nomination voted “against civil and human rights”?

RESPONSE: I have tremendous respect for the Supreme Court and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. The Leadership Conference opposed nominees for a number of different reasons based on a holistic evaluation of a nominee’s civil rights record. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees. The Leadership Conference did not oppose the vast majority of President Trump’s nominees. Justice Barrett was confirmed to the Supreme Court by this body and I have full respect for her place on the Court.

54. You tweeted on October 22, 2020 that it was “disgraceful” for Senate Republicans to move then-Judge Amy Barrett’s nomination to the Supreme Court forward. You said in that tweet that Republicans “will do anything to jam through this nominee to rip away health care amid a pandemic.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that senators who voted to confirm Justice Barrett’s nomination did so in order to “rip away health care amid a pandemic”?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. The Leadership Conference opposed nominees for a number of different reasons based on a holistic evaluation of a nominee’s civil rights record. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees. The Leadership Conference did not oppose the vast majority of President Trump’s nominees. Justice Barrett was confirmed to the Supreme Court by this body, and I have full respect for her place on the Court.

55. You tweeted on September 27, 2018, “Kavanaugh lied today. He showed himself to be

partisan. To be belligerent unbecoming of a SCt justice.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Justice Kavanaugh is a liar?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

56. You tweeted on September 27, 2018, “Kavanaugh lied today. He showed himself to be partisan. To be belligerent unbecoming of a SCt justice.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Justice Kavanaugh is “a partisan”?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

57. You tweeted on October 3, 2018, “Kavanaugh is not trustworthy.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Justice Kavanaugh is untrustworthy?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Kavanaugh was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

58. You tweeted on September 30, 2018, “This is not a criminal prosecution. It’s an assessment of whether Kavanaugh is fit to serve on the SCt. And based on his lying, belligerence, partisan rancor, and much else, he is not.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Justice Kavanaugh is unfit to serve on the Supreme Court?

RESPONSE: No.

59. *Salon* reported on July 11, 2018, that you said on a press call that week that Justice Neil Gorsuch is “dangerous and consequential,” and has shown “that he’s willing to discard established precedent.” This was not a tweet, but a call intended to influence press coverage. Do you believe that Justice Gorsuch is “dangerous”?

RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Gorsuch was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

60. In a letter to senators on October 23, 2018, you wrote that “Justice Thomas has publicly declared that he only hires law clerks who share his extreme judicial philosophy.” This was not a tweet. Do you believe that Justice Thomas is an “extremist”?



RESPONSE: I have tremendous respect for the Supreme Court, and I take very seriously the independence and integrity of the federal judiciary. Justice Thomas was confirmed to the Supreme Court by this body, and I have full respect for his place on the Court.

61. In a letter to senators on October 23, 2018, you wrote that “Justice Thomas has publicly declared that he only hires law clerks who share his extreme judicial philosophy.” This was not a tweet. Do you believe that every law clerk who has worked for Justice Thomas is an “extremist”?

RESPONSE: No.

62. In a letter to senators on October 23, 2018, you wrote that “Justice Thomas has publicly declared that he only hires law clerks who share his extreme judicial philosophy.” This was not a tweet. If you believe that every law clerk who has worked for Justice Thomas is an “extremist,” would you be unwilling to hire a lawyer at the Department of Justice if that lawyer had previously clerked for Justice Thomas?

RESPONSE: No.

63. You tweeted on September 4, 2018, “@SawHire is laying out the case about dark money influence on our courts. And tie it to Kavanaugh nomination and outcomes in  his and Roberts SCt cases. ” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Chief Justice Roberts allows improper influences to affect his opinions on the Supreme Court?

RESPONSE: No.

64. You tweeted on February 28, 2019, “Neomi Rao’s record shows she will not be a fair and impartial judge.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Judge Neomi Rao is a fair and impartial judge?

RESPONSE: Yes. I have tremendous respect for the independence and integrity of the federal judiciary.

65. You tweeted on March 12, 2019, “Make no mistake: A vote for Neomi Rao is a vote against civil and human rights.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Did senators who voted to confirm Judge Neomi Rao’s nomination vote “against civil and human rights”?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

66. You tweeted on February 4, 2019, “Neomi Rao’s demonstrated hostility to the civil and human rights of all should disqualify her from a lifetime appointment on the federal judiciary.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Judge Neomi Rao is “hostile” to “the civil and human rights of all”?

RESPONSE: No. I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

67. You tweeted on March 12, 2019, “Neomi Rao’s tireless efforts to roll back vital public protections for sexual assault survivors, victims of discrimination, and the environment demonstrate that she will not defend our fundamental civil and human rights.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Judge Neomi Rao has ever intended to do harm to “sexual assault survivors, victims of discrimination, [or] the environment”?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

68. You tweeted on February 26, 2019, “Eric Miller’s confirmation is yet another example of Senate Republicans’ push to pack the federal courts with right-wing ideologues – jeopardizing our civil and human rights.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe

that your statement was accurate despite being intemperate: Do you believe that Judge Eric Miller is “jeopardizing our civil and human rights” as a judge?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

69. You tweeted on February 10, 2020, “This week in voting rights: SENATE: McConnell moves to confirm anti-voting rights nominee (Brasher) & continues to block voting rights & election security bills.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Judge Andrew Brasher is an “anti-voting rights” judge?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

70. You tweeted on January 9, 2020, “TODAY: Senate Judiciary Committee set up a committee vote for 11th Circuit nominee Andrew Brasher of Alabama, who has an AWFUL voting rights record. Senators cannot advance this anti-civil rights nominee as we honor Dr. King’s birthday next week.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Judge Andrew Brasher is “AWFUL” on voting rights, or is an “anti-civil rights” judge?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

71. You tweeted on November 6, 2019, “BREAKING: Trump is nominating Andrew Brasher to the 11th Circuit. He was just confirmed to the district court in May. Brasher has an AWFUL record on voting rights, LGBTQ equality, reproductive freedom, environmental protection & other civil & human rights. This is outrageous.” While I appreciate that you

may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Judge Andrew Brasher is personally biased against “voting rights, LGBTQ equality, reproductive freedom, environmental protection & other civil & human rights”?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

72. You tweeted on April 11, 2019, “Voting for [J. Campbell Barker of Texas & Andrew Brasher of Alabama] is a vote against civil rights, plain & simple.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that senators who voted in favor of either Judge J. Campbell Barker or Judge Andrew Brasher voted “against civil rights”?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

73. You tweeted on November 17, 2020, “BREAKING: Senate is voting now to confirm Toby Crouse to the federal bench in Kansas. Crouse has an anti-civil rights record and is now the third Trump judge being voted on TODAY.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Judge Crouse is opposed to civil rights?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

74. You tweeted on November 17, 2020, “BREAKING: Senate is voting now to confirm

Toby Crouse to the federal bench in Kansas. Crouse has an anti-civil rights record and is now the third Trump judge being voted on TODAY.” You also tweeted on November 10, 2020, “#NoMoreTrumpJudges”. While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that there are “Trump judges” and “Obama judges” and “Bush judges” and “Clinton judges” and “Republican judges” and “Democrat judges”?

RESPONSE: No.

75. If you believe that there are “Trump judges” and “Obama judges” and “Republican judges” and “Democrat judges” or any other categories of judges based on who appointed them to the bench, please list the judges you believe are in each category.

RESPONSE: Please see my response to Question 74.

76. You tweeted on November 14, 2019, “McConnell needs to do something other than confirm terrible judges.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but what you meant by the statement despite it being intemperate: Which judges currently on the bench do you consider “terrible”?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

77. I’ve counted around 50 judges who are currently on the federal bench who you have accused of planning to “roll back” or “take away” either civil or human rights, or both. Exactly how many currently-sitting federal judges have you publicly accused, whether by tweet, letter, or some other medium, of planning to “roll back” or “take away” civil or human rights? Regardless of whether you now “regret” those accusations, please provide a list of all such judges about whom you have made such accusations.

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of

the Leadership Conference, I often communicated the organization’s position on judicial nominees.

78. You tweeted on October 5, 2018, “Senator Collins is failing her constituents and sending a dangerous message to survivors.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Senator Collins has failed her constituents?

RESPONSE: No. I regret my tweets about Senator Collins. I have tremendous respect for Senator Collins and her leadership on many issues, including healthcare and elder justice. If I am confirmed as Associate Attorney General, I would look forward to working with Senator Collins.

79. You tweeted on August 14, 2020, “How many of us are done with Sen. Susan Collins’s concerns?” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Are you “done” with Senator Collins’s concerns about any particular issue?

RESPONSE: No. I regret my tweets about Senator Collins. I have tremendous respect for Senator Collins and her leadership on many issues, including healthcare and elder justice. If I am confirmed as Associate Attorney General, I would look forward to working with Senator Collins.

80. You tweeted on August 14, 2020, “How many of us are done with Sen. Susan Collins’s concerns?” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but how you plan to carry out the role for which you have been nominated: If you are confirmed as Associate Attorney General, will you at any point while serving in the government be “done with” the concerns of any member of Congress with whom you disagree?

RESPONSE: No. If I am confirmed as Associate Attorney General, I would welcome the opportunity to work with Democratic and Republican members of Congress to serve the people of the United States. I have a long and demonstrated record of bipartisanship and a history of building coalitions and bringing conservative and liberal voices to the table. At the Leadership Conference, I also worked across the political spectrum—including with Republican and Democratic members of this Committee—on numerous legislative priorities, including the First Step Act. At the Civil Rights Division, I worked closely with law enforcement and communities to address police misconduct and build trust. I believe that my decades’-long commitment to bipartisanship is why my nomination has been supported by every major law enforcement organization and by prominent Republican leaders like Mark Holden, Grover Norquist, Trey Grayson, and Michael Chertoff, among others.

81. You tweeted on October 6, 2020, “A disgrace: McConnell has been blocking COVID

relief for 144 days but will help Trump confirm Barrett to a lifetime Supreme Court seat where she can invalidate the ACA amid the pandemic. Cruel and dangerous. Stacking the courts and entrenching power is truly all they care about.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Senator McConnell is “a disgrace”?

RESPONSE: No. This statement was made in my capacity as the President and CEO of the Leadership Conference, where I served as an advocate, and often a voice, for the civil rights community. As the head of the Leadership Conference, I often communicated the organization’s positions. I respect Senator McConnell, and the Leadership Conference has also supported his legislative work. If confirmed as Associate Attorney General, I would carry out the mandate of the Justice Department, which is to enforce the duly enacted laws of the United States, free from political influence or opinion. I have immense respect for the clear distinction between these roles.

82. You tweeted on October 6, 2020, “A disgrace: McConnell has been blocking COVID relief for 144 days but will help Trump confirm Barrett to a lifetime Supreme Court seat where she can invalidate the ACA amid the pandemic. Cruel and dangerous. Stacking the courts and entrenching power is truly all they care about.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that Senator McConnell is “cruel and dangerous”?

RESPONSE: No. This statement was made in my capacity as the President and CEO of the Leadership Conference, where I served as an advocate, and often a voice, for the civil rights community. As the head of the Leadership Conference, I often communicated the organization’s positions. I respect Senator McConnell, and the Leadership Conference has also supported his legislative work. If confirmed as Associate Attorney General, I would carry out the mandate of the Justice Department, which is to enforce the duly enacted laws of the United States, free from political influence or opinion. I have immense respect for the clear distinction between these roles.

83. You tweeted on October 6, 2020, “A disgrace: McConnell has been blocking COVID relief for 144 days but will help Trump confirm Barrett to a lifetime Supreme Court seat where she can invalidate the ACA amid the pandemic. Cruel and dangerous. Stacking the courts and entrenching power is truly all they care about.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but what you meant by the statement despite it being intemperate: Who is the “they” you refer to in the tweet, for whom “all they care about” is “[s]tacking the courts and entrenching power”?

RESPONSE: This statement was made in my capacity as the President and CEO of the Leadership Conference, where I served as an advocate, and often a voice, for the civil rights community. As the head of the Leadership Conference, I often communicated the organization’s positions. However, if confirmed as Associate Attorney General, I would

carry out the mandate of the Justice Department, which is to enforce the duly enacted laws of the United States, free from political influence or opinion. I have immense respect for the clear distinction between these roles.

84. You tweeted on September 18, 2020, “Just in case you don’t know – Lindsey Graham is now the chair of the Senate Judiciary Committee. We will use his words against him.” Do you believe that people should be accountable for the things they have said?

RESPONSE: Yes.

85. In a letter to senators on October 23, 2018, you called Senator Grassley “hypocritical” for six scheduling decisions that he made as chairman of the Senate Judiciary Committee. In the same letter, you said that Senator Grassley “has demonstrated sheer hypocrisy” for not allowing the American Bar Association—a nongovernmental entity—to dictate the Senate Judiciary Committee’s schedule. This was not a tweet. Do you believe that Senator Grassley is a “hypocrite”?

RESPONSE: No. I have tremendous respect for Senator Grassley and have worked with him and publicly uplifted his leadership on criminal justice reform. This letter was issued by the Leadership Conference on Civil and Human Rights, a coalition of over 200 civil rights organizations. If I am confirmed as Associate Attorney General, I would look forward to continuing to work with Senator Grassley to serve the people of the United States.

86. In a letter to senators on October 23, 2018, you claimed that “[Senate Judiciary Committee] Chairman Grassley and Senate Republicans” had committed an “abuse of power” by extending the 50-vote threshold, which was established by former Senator Harry Reid for district- and circuit-court judges, to Supreme Court judicial nominations. This was not a tweet. Do you believe that elimination of the Senate filibuster in any particular area by a single political party is an “abuse of power”?

RESPONSE: This statement was made in my capacity as the President and CEO of the Leadership Conference, where I served as an advocate, and often a voice, for the civil rights community. However, if confirmed as Associate Attorney General, I would carry out the mandate of the Justice Department, which is to enforce the duly enacted laws of the United States, free from political influence or opinion. I have immense respect for the clear distinction between these roles.

87. You tweeted on September 26, 2020, “Trump and Senate Republicans refuse to address the pandemic or the systemic racism and injustice that permeate our society. But they are determined to rush a Supreme Court nomination despite the fact that people are already voting. This is nothing less than an all-out assault on our democracy – and our civil and human rights are hanging in the balance.” While I appreciate that you may “regret” that rhetoric now, I’m not asking whether you “regret” your rhetoric but whether you believe that your statement was accurate despite being intemperate: Do you believe that currently-serving Senate Republicans have waged an “all-out assault on our democracy”? If so,

which ones?

RESPONSE: This statement was made in my capacity as the President and CEO of the Leadership Conference, where I served as an advocate, and often a voice, for the civil rights community. As the head of the Leadership Conference, I often communicated the organization's positions. However, if confirmed as Associate Attorney General, I would carry out the mandate of the Justice Department, which is to enforce the duly enacted laws of the United States, free from political influence or opinion. I have immense respect for the clear distinction between these roles. I also have immense respect for Senators on both sides of the aisle, as demonstrated by my long record of bipartisan consensus-building.

88. You repeatedly said during your hearing that you “regret” your inflammatory rhetoric, with which you have leveled highly personal attacks against sitting federal judges and members of the Senate, among others. On February 22, 2018, you wrote a letter to this Committee regarding another nominee who had made what you described as “insensitive” comments. In your letter, you argued that, “[w]hile he has recently apologized for these comments, the timing of that apology suggests it is one of convenience rather than remorse, offered in a last-ditch effort to salvage his nomination.” Prior to your hearing before this Committee on March 9, 2021, had you publicly apologized for any of your incendiary statements? If so, please provide copies of those public apologies, including the dates and locations when they were made.

RESPONSE: I have expressed regret over some of my past harsh rhetoric prior to my confirmation hearing.

89. On January 20, 2021, President Biden issued an “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.” Do you believe that order allows for or directs the government to treat Americans differently based on their gender identity?

RESPONSE: In the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, E.O. No. 13988 (Jan. 20, 2021), President Biden has been very clear and forthright that all persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. That principle is enshrined in federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964. In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court held that Title VII’s prohibition on discrimination “because of . . . sex” covers discrimination on the basis of gender identity and sexual orientation, and President Biden’s Executive Order specifies that under *Bostock*’s reasoning, laws that prohibit sex discrimination prohibit discrimination on the basis of gender identity or sexual orientation, so long as they do not contain sufficient indications to the contrary. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law.

90. On January 20, 2021, President Biden issued an “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.” Do

you believe that order allows for or directs the government to treat Americans differently based on their sexual orientation?

RESPONSE: In the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, E.O. No. 13988 (Jan. 20, 2021), President Biden has been very clear and forthright that all persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. That principle is enshrined in federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964. In *Bostock v. Clayton County*, 590 U.S. ___ (2020), the Supreme Court held that Title VII’s prohibition on discrimination “because of . . . sex” covers discrimination on the basis of gender identity and sexual orientation, and President Biden’s Executive Order specifies that under *Bostock*’s reasoning, laws that prohibit sex discrimination prohibit discrimination on the basis of gender identity or sexual orientation, so long as they do not contain sufficient indications to the contrary. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law.

91. When you were previously at the Department of Justice, you issued guidance in which you defined “gender identity” as “an individual’s internal sense of gender.” What does “gender” mean to you?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.

92. If “gender identity” is an “internal sense,” will that gender identity always be manifested in a way that other people can perceive, or is it possible that an individual’s “internal sense of gender” is something that might be imperceptible to others?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.

93. President Biden’s January 20, 2021 Executive Order purports to prohibit discrimination based on gender identity. How many distinct genders are protected by this order? Please list them.

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.

94. During your hearing, I asked you about issues involving transgender athletics and competitive fairness, and whether it is fair to high school girls, given innate physical differences between males and females, to have high school boys who transition to a female gender identity compete against them in athletic events. You said that you believe that “LGBTQ people have the right and dignity to be identified as they see fit,” but you did not answer my question. Do you believe that it is fair to high school girls to be forced to compete in athletic events against high school biological boys who transition to a female gender identity?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. I understand that a number of pending legal challenges concern the rights of transgender individuals to participate in schools’ athletic programs, and that the Department recently withdrew some filings that the prior Administration made in some of those cases. Because I am not in the Department, I have not been privy to any ongoing conversations about such matters.

95. If a biological male student informs a school that he now identifies as female, should the school be required to allow that student to participate in female athletics events?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. I understand that a number of pending legal challenges concern the rights of transgender individuals to participate in schools’ athletic programs, and that the Department recently withdrew some filings that the prior Administration made in some of those cases. Because I am not in the Department, I have not been privy to any ongoing conversations about such matters.

96. In January 2019, you testified before the House Judiciary Committee that felon disenfranchisement is “rooted in the post-Civil War Era” and is fundamentally racist. Should felons still in prison for their crimes be allowed to vote?

RESPONSE: I agree with President Biden’s statement in his Executive Order on Promoting Access to Voting, E.O. No. 14019 (Mar. 7, 2021), in which he explained that is the Administration’s policy “to promote and defend the right to vote for all Americans who are legally entitled to participate in elections.”

97. During your hearing, I asked you about an exchange you had before this Committee in June 2020. During that June 2020 hearing, you were asked whether you believe that all Americans are racist. Your response at the time was, “Yes. I think that we all have implicit biases and racial biases. Yes, I do.” I asked you against which races you harbor bias. You described what you believe implicit bias to mean, you even said that such

biases can only be managed “if we can acknowledge” them, and you said that you are “quite aware” that you “hold stereotypes that [you] have to manage.” You did not, however, answer my question or actually acknowledge your racial biases. Against which races do you harbor bias or hold such stereotypes?

RESPONSE: Studies have demonstrated that we all have implicit bias. It does not mean that we are harboring any racism at all. These are unconscious assumptions and stereotypes that we all make as part of the human condition.

98. During your hearing, I asked you about an exchange you had before this Committee in June 2020. During that June 2020 hearing, you were asked whether you believe that all Americans are racist. Your response at the time was, “Yes. I think that we all have implicit biases and racial biases. Yes, I do.” Against which other, non-racial groups do you harbor bias or hold stereotypes?

RESPONSE: Studies have demonstrated that we all have implicit bias. It does not mean that we are harboring any racism at all. These are unconscious assumptions and stereotypes that we all make as part of the human condition.

99. During your hearing, I asked you about another exchange you had before this Committee in June 2020. During that June 2020 hearing, you said that “there is not an institution in this country that isn’t suffering from institutional racism.” I asked you whether the Biden White House suffers from institutional racism. While you discussed general efforts through American history to combat racism, you did not answer my question: You have said that “there is not an institution in this country that isn’t suffering from institutional racism.” Does the Biden White House suffer from institutional racism? If so, against which groups is the Biden White House institutionally racist?

RESPONSE: President Biden has acknowledged that entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied equal opportunity to individuals and communities. As Attorney General Garland stated, systemic or institutional racism refers to historic patterns or practices that have had a disparate impact of communities of color and other ethnic minorities, such as the fact that those communities have disproportionately lower rates of employment and wealth accumulation. Acknowledging the existence of systemic racism in society does not mean that any particular institution or individual is racist.

100. On June 16, 2020, you testified before this Committee that “Congress should end federal programs that provide military equipment such as the U.S. Department of Defense 1033 program.” The 1033 Program allows the Department of Defense to share surplus military equipment, including everything from Kevlar helmets to computers to office supplies to armored vehicles, with cash-strapped law enforcement agencies. The 1033 Program was sharply curtailed, although not ended, by President Obama in 2015, after the issuance of a report from a “Law Enforcement Equipment Working Group.” Please describe your involvement, if any, with the Law Enforcement Equipment Working Group.

RESPONSE: I was not personally involved with the Law Enforcement Equipment Working Group (LEEWG). The LEEWG was led by the Office of Justice Programs. A Civil Rights Division representative attended the law enforcement and other stakeholder listening sessions and meetings regarding compliance with federal civil rights laws.

101. Did you disagree with any of the recommendations of the “Law Enforcement Equipment Working Group” established by Executive Order 13688?

RESPONSE: I did not play a role in developing these recommendations. I do not recall taking a position on the Working Group’s recommendations.

102. When law enforcement officers are facing down violent mobs, should they have access to protective equipment like helmets and riot shields, or not?

RESPONSE: Violence is never appropriate, and the Justice Department must enforce the law, and protect all—including law enforcement—from violence. The Department must investigate and prosecute violent crimes regardless of their source. Law enforcement must have the appropriate and necessary tools and resources needed to protect the communities they serve.

103. Opponents of the 1033 Program have pointed to the “intimidating” appearance of riot shields and helmets. When police are faced with a mob of violent rioters and are trying to keep the peace, is it more important that they have the equipment they need to be protected, or that they avoid looking too “intimidating” to the mob?

RESPONSE: Violence is never appropriate, and the Justice Department must enforce the law, protect all—including law enforcement—from violence, and investigate and prosecute violent crimes regardless of which direction they come from. Law enforcement must have all the appropriate tools and resources they need to protect the communities they serve.

104. Should rioters be “given space to destroy” in order to work out their anger?

RESPONSE: No. Violence is never appropriate. The First Amendment only protects peaceful protests, and the Justice Department must enforce the law and protect communities from violence regardless of who engages in it.

105. Should rioters be given a free pass to work out their anger by attacking government buildings?

RESPONSE: No. Violence is never appropriate. The First Amendment only protects peaceful protests, and the Justice Department must enforce the law and protect communities from violence regardless of who engages in it.

106. Should rioters be given a free pass to work out their anger by attacking non-governmental targets, such as by attacking innocent people or businesses?

RESPONSE: No. Violence is never appropriate. The First Amendment only protects peaceful protests, and the Justice Department must enforce the law and protect communities from violence regardless of who engages in it.

107. Should rioters who engage in violence be prosecuted to the fullest extent of the law?

RESPONSE: Violence is never appropriate. The First Amendment only protects peaceful protests, and the Justice Department must enforce the law and protect communities from violence regardless of who engages in it.

108. Is it important to enforce our nation's immigration laws?

RESPONSE: Yes.

109. Is it appropriate for the parties to a case to ignore a court's final order?

RESPONSE: No.

110. If you are confirmed as Associate Attorney General, the Civil Division's Office of Immigration Litigation (OIL) will report to you. OIL is responsible for handling immigration litigation on appeal to the federal courts. If confirmed as Associate Attorney General, will you commit to advocating for immigration enforcement to the greatest extent allowable by law?

RESPONSE: If confirmed as Associate Attorney General, I commit to enforcing the laws of the United States, including immigration laws.

111. Who has more of a right to a job in the United States, a United States citizen or an illegal alien?

RESPONSE: The immigration laws govern whether and to what extent immigrants can work in the United States.

112. Do you believe that it should remain a crime to illegally enter the United States?

RESPONSE: President Biden has been clear that he does not support decriminalization of the border.

113. If an immigration court rules that an illegal alien who assaulted a U.S. citizen must be deported, and all appeals are exhausted, should that alien be deported?

RESPONSE: If confirmed, it will be my mandate to follow and enforce federal law. Neither criminal enforcement of immigration-related offenses nor deportation proceedings will be within my direct purview.

114. If an immigration court rules that an illegal alien who is a gang member must be deported, and all appeals are exhausted, should that alien be deported?

RESPONSE: The prioritization of deportations would not be within my purview if confirmed as Associate Attorney General. Immigration laws govern both the process and timing of a non-citizen's removal.

115. Based on what you currently know, do you believe that the United States is facing a crisis at our southern border?

RESPONSE: I am not currently at the Department, and I am only aware of publicly reported information concerning challenges at our southern border. It is my understanding that the Administration is undertaking a comprehensive review of immigration policies in an effort to ensure that they are consistent with the law and the Nation's values.

116. Does all crime qualify as "persecution" for the purposes of asylum eligibility under our immigration laws?

RESPONSE: I share Attorney General Garland's view that asylum is part of American law and the Department of Justice and the State Department have an obligation to apply the federal asylum laws. If confirmed, I will faithfully and fairly enforce our nation's immigration laws.

117. You have previously advocated for the elimination of the doctrine of qualified immunity. Even with the doctrine of qualified immunity in place, if a government official breaks the law, isn't it true that she could potentially be charged with a crime?

RESPONSE: Yes, as Attorney General Garland stated, if a government official breaks the law, the official could potentially be charged with a crime depending on the law and the nature of the violation.

118. If a law enforcement officer violates an individual's clearly established rights, even under the doctrine of qualified immunity, isn't it true that such an officer would be subject to potential lawsuit by the victim?

RESPONSE: Yes, as Attorney General Garland stated, state and local officials who violate the rights secured by the Constitution and laws of the United States are subject to suits under 42 U.S.C. § 1983, and federal officials who violate certain constitutional rights may be subject to suit under the implied cause of action recognized by the Supreme Court in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

119. If qualified immunity did not exist, would it be easier or more difficult for a criminal to sue an arresting officer personally for actions that did not violate the criminal's clearly established rights?

RESPONSE: Though the facts of any given situation matter, presumably it would be easier.

120. Do you believe that the standards of conduct for police officers should be clear and understandable by a reasonable officer?

RESPONSE: Yes.

121. Does the Associate Attorney General oversee the Office of Justice Programs, which administers the Department of Justice's grant funds to state and local law enforcement entities?

RESPONSE: Yes.

122. During your hearing, you highlighted endorsement letters issued on behalf of your nomination from a number of law enforcement unions and associations. Several of these same organizations have informed my office that they felt pressured by the Biden administration to endorse your nomination. In more than one case, organizations shared that they had offered to the administration to endorse your superiors (Attorney General Garland and Lisa Monaco) instead, but were told that was "not enough." To the best of your knowledge, have you or anyone affiliated with you, with the Biden administration, or the Biden transition team suggested to any law enforcement organization that their access to or influence with the Department of Justice would in any way be affected by whether they would endorse or at least decline to oppose your nomination?

RESPONSE: No.

123. Since the date that you first discussed with the Biden campaign or transition team the possibility that you could be nominated to the position of Associate Attorney General until the date of your hearing, please list each meeting or contact you have had with any law enforcement group that endorsed your nomination. For each such meeting or contact, please identify any Biden campaign, administration, or transition team official who joined the meeting. For each such meeting or contact, please also identify whether the meeting included any discussions or suggestion of the organization endorsing your nomination.

RESPONSE: Throughout my career, I have communicated regularly with law enforcement groups and leaders. Many of those conversations are informal.

124. Since the date that you first discussed with the Biden campaign or transition team the possibility that you could be nominated to the position of Associate Attorney General until the date of your hearing, in any of the conversations you have had with law enforcement groups about your nomination, have you said anything that could be reasonably construed to suggest that endorsing your nomination was a necessary prerequisite for having a good relationship with the Department of Justice during the Biden administration?

RESPONSE: No.

125. On what date did you first discuss with the Biden campaign or transition team the possibility that you could be nominated to the position of Associate Attorney General?

RESPONSE: On or about December 2020.

126. On what date did the Biden campaign or transition team inform you that President Biden would nominate you to the position of Associate Attorney General?

RESPONSE: Early January 2021.

127. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

RESPONSE: The Department of Justice received these questions on March 12, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on March 17, 2021.

128. Did any other individual write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each individual that wrote or drafted your answers. If the individuals are government officials, please also identify the department or agency with which they are employed.

RESPONSE: The Department of Justice received these questions on March 12, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on March 17, 2021.

**Senate Judiciary Committee - Questions for the Record from Senator John Kennedy
March 9, 2021**

Hearing entitled: “Nominations”

Questions for Vanita Gupta, nominated to be Associate Attorney General of the United States

1. Do you support Department of Justice employees receiving training in critical race theory? If so, why?

RESPONSE: President Biden issued an Executive Order directing federal agencies to conduct an internal review and devise plans to address unequal barriers to opportunity in agency policies and programs. If confirmed, I look forward to working with him to support the President’s efforts to advance racial equity and will support trainings at the Department of Justice that help us further consider these issues in the context of ensuring that our Constitution and our laws are fully and fairly enforced.

2. After you left the Obama-Biden administration, you wrote an article entitled, “*Facebook is Threatening Our Elections—Again,*” in which you criticized Facebook for exempting political speech from its community standards. During the lead-up to the 2020 presidential election, you were credited in a protocol.com article entitled, “*She got into the weeds’: Biden’s associate AG is a top tech watchdog*” with going to Facebook and “delivering a hard line about the implications of their decisions for civil rights” and that they “really felt in awe of [you] and relied on you.” According to the article, you lobbied them on issues relating to voter suppression, “particularly when it came to [the former president’s] own posts about the election.” Apparently, your advocacy “had a huge impact on the decisions Facebook made closer to the election.”

You, a former Obama-Biden administration official, were given a lot of credit for suppressing President Trump’s access to communicate with voters. You were then rewarded with a nomination upon President Biden’s election to the presidency. Does that seem appropriate to you?

RESPONSE: Robust debate and the freedom of expression are cherished hallmarks of our democracy enshrined in the First Amendment. Viewpoint discrimination by the government is unconstitutional and has no place in our society. The Leadership Conference advocated for Facebook and Twitter to enforce their community standards, especially as it related to misinformation about the census and voting, to protect the civic participation of all, regardless of party affiliation or status. The coalition also urged Facebook to stop allowing unlawful ad targeting in housing ads. This work was part of the coalition’s non-partisan advocacy to protect civil rights, and did not suppress anyone’s access to communicate with voters. If I am confirmed as Associate Attorney General, I will uphold the Justice Department’s values of independence, fairness, and devotion to the rule of law.

3. In 1996, the late Justice Ginsburg noted that “physical differences between men and women . . . are enduring” and that “‘inherent differences’ between men and women . . . remain cause for celebration . . .” (See *United States v. Virginia (1996)*).

Well, the Equality Act and President Biden’s recent Executive Order on school sports ignores the important biological distinctions between males and females. Instead, today it is about the way a person “feels” about their gender that counts.

Do you believe biological male and female distinctions can be overruled by a person’s self-perception of their gender identity? (i.e., does perception overrule biological reality?)

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. Transgender people can be discriminated against because their gender identity does not match the sex they were assigned at birth. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law. I understand that a number of pending legal challenges concern the rights of transgender individuals to participate in schools’ athletic programs, and that the Department recently withdrew some filings that the prior Administration made in some of those cases. Because I am not in the Department, I have not been privy to any ongoing conversations about such matters.

4. What laws, if any, do you believe should protect women based on being biologically female?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. These principles are also enshrined in our Nation’s anti-discrimination laws, among them Title VII of the Civil Rights Act of 1964. In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court held that Title VII’s prohibition on discrimination “because of . . . sex” covers discrimination on the basis of gender identity and sexual orientation, and President Biden’s Executive Order specifies that under *Bostock’s* reasoning, laws that prohibit sex discrimination prohibit discrimination on the basis of gender identity or sexual orientation, so long as they do not contain sufficient indications to the contrary.

5. Do you believe it is okay for domestic abuse shelters to be limited to only biological women?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every

person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. These principles are also enshrined in our Nation’s anti-discrimination laws. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law.

6. Do you believe there should be separate prisons for biological males and biological females?

RESPONSE: As the President’s Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation provides, every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love. All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation. These principles are also enshrined in our Nation’s anti-discrimination laws. If confirmed, I will enforce federal law and, as Attorney General Garland has explained, advance the Administration’s policy program consistent with the Department’s objective assessment of the law.

7. In your SJQ, you noted that you participated in 3 trials—2 bench and one jury. For each trial, please describe:
 - a. Whether you were the sole counsel, chief counsel, or an associate counsel for each trial.

RESPONSE:

In *Freddie Brookins, Jr. v. State of Texas*, Cause No. WR-53,358-01 (242d Dist. Ct. Swisher Cnty. and Tex. Crim. App. May 1, 2003) (“Tulia 1”) I was lead counsel.

In *Jason Jerome Williams v. State of Texas*, Cause No. WR-51,824-01 (242d Dist. Ct. Swisher Cnty. and Tex. Crim. App. May 1, 2003) (“Tulia 2”) I was lead counsel.

In *State v. Rideau*, No. 15321-01 (La. Dist. Ct. Jan. 15, 2005) (“Rideau”) I was associate counsel.

- b. The length of each trial.

RESPONSE: All trials were approximately one week long.

- c. The number of attorneys on your team and their contributions.

RESPONSE:

The Tulia 1 and 2 teams (ultimately these matters were consolidated for purposes of final judicial findings and relief) consisted of approximately eleven lawyers present at the habeas

trial. They assisted with record development and presentation, examination of witnesses, and preparation of post-trial pleadings and memos.

The Rideau team consisted of approximately five lawyers, who conducted opening statements, direct and cross examinations and closing arguments.

- d. Whether you delivered the opening, closing or rebuttal statement(s) and the approximate length of the statement.

RESPONSE: To the best of my recollection, I delivered the opening statement in Tulia 1.

- i. Please also provide the SJC with a copy of any statement(s) you delivered.

RESPONSE: I did not retain a copy of the statement.

- e. How many witnesses (if any) you directed and the approximate length of the examination.

RESPONSE: To the best of my recollection, I conducted the direct examination of three witnesses in Tulia 1.

- f. How many witnesses (if any) you cross-examined and the approximate length of the examination.

RESPONSE: To the best of my recollection, I cross examined two witnesses in Tulia 1.

Questions for Sen. Tillis at Confirmation Hearing for Vanita Gupta, nominee for Associate Attorney General

Intellectual Property Enforcement

1. The Department of Justice's attention to intellectual property enforcement has been somewhat inconsistent over the years. During the times that IP enforcement has properly been regarded as a high priority, the Department generally had put into place a structure that emphasizes its importance and takes a coordinated approach involving all the stakeholder components. What type of organizational structure do you plan to put in place at DOJ, as well as other steps you will take, to ensure that protecting American intellectual property will be regarded as a high priority under your leadership?

RESPONSE: Intellectual property enforcement is a priority area, as intellectual property crime threatens both our economic wellbeing and, in some instances, public safety. If confirmed, I would look forward to examining this issue in greater depth, including studying how the Department can better coordinate its approach among various stakeholder components.

2. How do you plan to work proactively with the IP Enforcement Coordinator alongside DOJ's sister agencies, especially DHS, to coordinate IP enforcement across the government? In addition, please provide specific information about your plan to combat counterfeit products, online piracy and copyright crime, and the theft of trade secrets.

RESPONSE: Like Attorney General Garland, I share your commitment to ensuring a strong and coordinated approach to intellectual property enforcement. If confirmed, I would look forward to working with the Department's stakeholder components, including its IP Task Force, in seeking to ensure that the Department closely collaborates with the Office of the Intellectual Property Enforcement Coordinator, as well as other agencies, to address these serious issues.

3. Last Congress, Senator Leahy and I partnered together to enact the Protecting Lawful Streaming Act. This bill finally closed the so-called "streaming loophole" by giving the Department the authority to pursue felony charges against large scale, commercial piracy organizations. Importantly, this law doesn't allow the Department to target individual streamers, companies pursuing licensing deals in good faith, or internet service providers. Will you commit to using this new authority and make the prosecution of commercial piracy sites a tier one priority?

RESPONSE: I consider intellectual property enforcement a priority area, and if confirmed, I will seek to ensure the Department vigorously enforces this important law.

- a. How soon can the Department update the US Attorneys manual to provide guidance on prosecutions under this law?

RESPONSE: Because I am not currently in the Department, I am not familiar with the guidance that currently exists to implement this law. If confirmed, I will seek to ensure that any appropriate revisions to the relevant guidance are made in a timely fashion.

- b. Will you ensure that such guidance makes clear that—per the plain, clear, and unambiguous words of the statute—that prosecutions should only be pursued against commercial piracy services?

RESPONSE: Because I am not currently in the Department, I am not familiar with the guidance that currently exists to implement this law. If confirmed, I will seek to ensure that any appropriate revisions to the relevant guidance are made in a timely fashion.

Patent Eligibility Reform

1. As you likely know, reforming our nation's patent eligibility standards is one of my top priorities. The current state of patent eligibility law is in shambles. The standards are so unworkable that you have judges ruling that things like a garage door opener is an abstract idea. That's bizarre and well-beyond the scope of what any reasonable person would conclude. These unworkable standards are having an adverse impact on a number of sectors, from life-sciences and precision medicine to quantum computing, 5G, and artificial intelligence. If the United States is going to remain the world's leader in innovation, we have to fix this.

That's why I'm doing everything I can, from hearings, letters, and draft legislation, to filing an *amicus brief* in the *American Axle* case. But I can't do it alone. If you are confirmed, will you support the Solicitor General finding appropriate cases on patent eligibility and to urge the Supreme Court to take them up and finally provide clarity in this area of the law?

RESPONSE: I have not had occasion to study this issue in detail. I share your commitment to protecting the intellectual property of American creators and business, as well as ensuring that there is clarity in this important area of law.

Antitrust

1. As you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition. And a big area right now where more antitrust scrutiny is likely needed is the technology industry—particularly big internet companies. How do you think the Department of Justice should approach antitrust enforcement against what we think of as “big tech”?

RESPONSE: I take the enforcement of the antitrust laws very seriously. If I am confirmed, the Department will vigorously enforce antitrust laws in every sector of the economy, including the technology sector. In addition, if I am confirmed, I will oversee the Antitrust Division completely free from any improper influence, be it partisan, corporate or otherwise.

2. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. At the same time, Facebook and Google have repeatedly refused to negotiate in good faith with news publishers for their carrying their content on Facebook and Google. Recently this took a very ugly turn in Australia when Google agreed to some licensing terms but Facebook refused and then prohibited its Australian customers from sharing URLs from those news publishers. What do you plan to do to address monopoly powers generally and particularly those big tech companies that control access to information?

RESPONSE: If I am confirmed as Associate Attorney General, I will work with the Antitrust Division to enforce our country’s antitrust laws which are so core to our economy and to protecting American consumers.

3. In the copyright space, the Department of Justice has overseen the music consent decrees that have governed the public performance of music for 80 years. Songwriters and publishers have long argued—and I fully agree—that the consent decrees are outdated – especially for the digital age. Following a lengthy review of the consent decrees, the past administration left the consent decrees untouched. What are your thoughts on the music consent decrees, and do you plan to reopen their review? Do you support transitioning to a fully functioning free market for musical licensing?

RESPONSE: I have not studied the market for musical licensing, or the Department’s music consent decrees. If confirmed, I would look forward to learning more about this issue and discussing it with the Antitrust Division and the U.S. Copyright Office.

4. In the patent space, standard essential patents are those patents necessary to meet certain requirements set by standard setting organizations. One area where this comes up a lot is for cell phone makers. In 2019, Senator Coons and I sent a letter to the Department of Justice urging greater clarity on how DOJ enforces antitrust policy with regard to standard essential patents. In particular, we wanted to ensure that DOJ doesn’t unduly

prejudice rights holders in this area. What do you think should be DOJ's competition policy and enforcement practices related to standard essential patents?

RESPONSE: I have not studied the issue of the treatment of standard essential patents. If confirmed, I would look forward to learning more about this issue and discussing it with the Antitrust Division.

5. What are your thoughts on the ongoing issues surrounding the *Qualcomm* litigation? How will you approach the types of antitrust issues raised by the *Qualcomm* case?

RESPONSE: My understanding is that the FTC's *Qualcomm* case remains pending. I have not studied the *Qualcomm* case and therefore have not formed a view about how I would approach similar issues if they arose in the future. As a general matter, however, I am committed to vigorous enforcement of the antitrust laws.

Section 230 and Telecommunications

1. Last Congress this Committee dedicated a lot of attention to the Communications Decency Act, and particularly how some internet providers hide behind section 230's bar on liability to not address illicit user activity while also actively curating content. DOJ weighed in last year after completing a lengthy review of section 230 and sent Congress 230 reform legislation. As I'm sure you know, section 230 can pose real challenges for law enforcement because it does not encourage online services to address illicit activity – including sex trafficking – on their sites. DOJ's proposal focused on increasing transparency from online services when they remove lawful speech and motivating internet platforms to better address illicit activity. What are your thoughts on how section 230 should be reformed?

RESPONSE: As enacted, Section 230 of the Communications Decency Act established a framework governing the civil liability of corporations that publish user-generated content. President Biden and many members of Congress, including several members of the Judiciary Committee, have raised concerns about different aspects of Section 230. President Biden has expressed his willingness to work with Congress to develop a better framework that addresses dangerous and inappropriate behavior and still protects a free and open internet. If confirmed, I would welcome the opportunity to look into this issue.

Counterfeit Goods

1. Counterfeit goods are not only a threat to American innovation, they are a significant threat to public safety. This is especially true as counterfeit PPE such as N95 masks flood into the United States putting Americans at risk. Earlier this month there was another report of more counterfeit N95 masks that had been sold to hospitals and, just last week, federal agents seized one million counterfeit N95 masks. What steps will you take if you are confirmed to stop the flow of counterfeit goods into the United States and protect public safety?
 - a. How will you coordinate with the Department of Homeland Security to combat the importation of counterfeit goods?
 - b. Will you commit to establishing a specific task force dedicated to this issue?

RESPONSE: I share your concern regarding counterfeit goods. Because I am not at the Department, I am not familiar with the Department's current efforts to stop the flow of counterfeit goods into the United States. If confirmed, I will coordinate with all appropriate government partners, including the Department of Homeland Security, to address this important issue.

Cybersecurity and Privacy

1. We are still working to understand the extent of the reported Solar Winds cyber-attack. While the extent of this particular attack is shocking, cyber-attacks are not a new threat to American infrastructure and technology. If you are confirmed, what will you do to prevent another attack like the Solar Winds attack, and more broadly, cyber-attacks on American infrastructure and innovation in the future?

RESPONSE: I share your concerns about cybersecurity and the need to be nimble in our efforts to prevent, detect, and disrupt cyberattacks. I know President Biden has repeatedly warned that there are vulnerabilities in U.S. cyber infrastructure. If confirmed, I would look forward to fully supporting the President's and his national security team's efforts on that front.

2. To combat future cyberattacks we need a coordinated, whole-of-government approach to this issue. From proactive security measures to the quick reporting and prosecution of cyberattacks, every relevant agency in the federal government needs to be engaged on this issue. How will you increase cooperation between private actors and companies—particularly companies engaged in cutting edge research and development of emerging technologies—and the federal government on these issues?

RESPONSE: I fully agree that this threat demands a forward-looking and whole-of-government response. If confirmed, I am committed to developing a coordinated approach to combatting cyberattacks and would look forward to reviewing the Department's existing efforts at cooperation and finding ways to enhance those efforts.

Law Enforcement

1. In 2020, 47 law enforcement officers were murdered by criminals. In 2021, there have already been 11 law enforcement officers killed by criminals. The shocking calls to “defund the police” continue to devalue and dehumanize our brave men and women in blue. This is dangerous and it is unacceptable. If you are confirmed, what will you do to stop violence against law enforcement officers?

RESPONSE: Violence is never appropriate, and the Justice Department must enforce the law, protect all—including law enforcement—from violence, and investigate and prosecute violent crimes regardless of which direction they come from. Attorney General Garland has testified that ensuring the safety and security of all public servants, including police officers, will be a top priority for him. If confirmed, I will prioritize using the tools available to the Associate Attorney General to these same ends.

2. Do you agree or disagree that we need to make it a federal crime to assault law enforcement officers? If not, please explain why.

RESPONSE: Like Attorney General Garland, I understand that 18 U.S.C. § 111 makes it a federal crime to assault, resist, oppose, impede, intimidate, or interfere with a federal officer while the officer is engaged in the performance of his or her official duties.

3. What are your thoughts on “defunding the police?” If you don’t support defunding the police, how do you and the Administration intend to manage the vocal stakeholders calling for this policy?

RESPONSE: I do not support defunding the police. Throughout my career, I have supported law enforcement, working collaboratively with law enforcement leaders and advocating for more funding for the police where appropriate, including for officer wellness and safety programs, body-worn cameras, and equipment and data systems upgrades. Based on feedback from law enforcement and other stakeholders, in discussions over many years, I have supported community-based interventions for people with mental illness or substance use disorders, for example, to relieve the burden on law enforcement and to provide alternatives that can keep officers and community members safe. During my time leading the Civil Rights Division I testified before the Senate in support of additional funding for law enforcement funding programs.

I am proud that my nomination has been supported by major law enforcement organizations, including the National Fraternal Order of Police, the National Sheriffs’ Association, Major County Sheriffs of America, the Major Cities Chiefs Association, the International Association of Chiefs of Police, the Police Executive Research Forum, the Federal Law Enforcement Officers Association, the National Organization of Black Law Enforcement Executives, the Hispanic American Police Command Officers Association, and the National Association of Women Law Enforcement Executives.

4. What are your thoughts on qualified immunity for law enforcement officers? I view qualified immunity as a critical legal protection for law enforcement agencies across the country? Do you believe it is appropriate to eliminate or limit qualified immunity?

RESPONSE: Proposals to reform qualified immunity present challenging issues and there are not easy answers. Law enforcement officers must be able to do their critical job of keeping our communities safe, and individual officers must be held accountable when misconduct occurs. If confirmed, I would continue to engage with law enforcement, civil rights, and community leaders on these difficult questions. President Biden has called for the government to review qualified immunity as a policy matter, and with respect to such matters, as Attorney General Garland has explained, the Justice Department advances the policies of the President as long as they are consistent with the law.

Criminal Justice Reform

1. The First Step Act was a landmark law that had broad bipartisan support. I am proud of the work we in the Judiciary Committee did to enact this commonsense and historic legislation. But proper implementation of the First Step Act is just as important as passing the law. Do I have your commitment that you will work in good faith with Congress to see that the First Step Act is fully implemented?

RESPONSE: Yes. As the President and CEO of the Leadership Conference, I was privileged to work with a number of Republican and Democratic Members of Congress, and of this Committee, to pass the First Step Act. If I am confirmed as Associate Attorney General, I would work to ensure that the First Step Act is fully implemented.

2. Earned time credits were included in this legislation as an incentive to encourage inmates to participate in programming that is likely to reduce their likelihood of recidivism. At this time, however, inmates have not yet been assigned earned time credits.
 - a. When are inmates scheduled to begin receiving earned time credits?
 - b. Which date has the Department and the Bureau of Prisons identified as the date when earned time credits begin to accrue?
 - c. How significant are the waitlists for inmates to access programming, and how will you reduce these waitlists?
 - d. What steps will you take to ensure that inmates have access to programming which will decrease their likelihood of recidivism?

RESPONSE: Because I am not yet in the Department, I am not familiar with the current implementation of the First Step Act. If I am confirmed as Associate Attorney General, I would work to ensure that the First Step Act is fully implemented.

3. Which criminal justice policy do you believe is the most important issue that needs to be addressed?

RESPONSE: If confirmed, criminal justice reform will remain a priority for me. I have spent a substantial part of my career working on these issues, which I believe are issues that bring people together, including law enforcement and civil rights leaders. I share Attorney General Garland's commitment to the promise of fair and impartial enforcement of the law, and addressing disparate results for communities of color in our justice system.

4. President Biden issued an executive order directing the Attorney General not to extend any contracts for privately operated criminal detention facilities.
 - a. How is the Department of Justice interpreting "privately operated criminal detention facilities?"

- b. Does this definition apply to pretrial detention by the U.S. Marshals Service? If so, please provide additional information about the decision to limit U.S.M.S. use of privately operated criminal detention facilities.

RESPONSE: Because I am not currently at the Justice Department, I am not privy to any conversations about these matters or familiar with the relevant facts. As Attorney General Garland testified, the Department is a part of the Executive Branch, and for that reason on policy matters the Department follows the lead of the President as long as it is consistent with the law. The President's Executive Order is the best explanation of the Administration's thinking on this issue.

Victims Issues

1. In 2017, the Crime Victim's Fund collected \$6.5 billion – the most ever, and three times what was collected the year before. Collections in 2018 and 2019 plummeted to approximately \$500 million. As a result, organizations that serve victims have been deeply impacted by cuts in federal funding. My colleagues and I sent a letter on this issue last year that has yet to receive a response. In the letter, we identified the use of non-prosecution agreements as a major factor in this decrease in collections. Do you agree with that assessment?
 - a. Other than the use of non-prosecution agreements, what other factors have contributed to this significant decline in collections for the Crime Victims Fund?
 - b. Do you commit to working with the President and Congress to address this growing crisis for organizations who serve victims?
 - c. What recommendation would you make as Attorney General to solve this challenge?

RESPONSE: I am aware of this issue; however, I am not familiar with the letter you are referencing. The Department must work to ensure victims and survivors are supported and made whole. If I am confirmed, I will work with my colleagues in the Department and Congress to prioritize addressing this problem.

Private Immigration Detention

1. President Biden has prohibited the Department of Justice from renewing or entering into any new contracts for private prison facilities. According to media reports, President Biden may extend that prohibition to immigration detention. Do you support this policy? How will you advise the Administration on this issue if you are confirmed?
 - a. How would you expect to absorb the detainee population from private facilities into public facilities?

RESPONSE: Because I am not currently at the Department, I am not familiar with the nature of the contracts the Bureau of Prisons and the U.S. Marshals Service has with privately owned facilities. The Bureau of Prisons and the U.S. Marshals Service do not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

Asylum

1. The Executive Office of Immigration Review will have extensive authorities over the removal process for illegal immigrants. How does the Biden Administration plan to define asylum?

RESPONSE: I would refer you to President Biden's Executive Orders on immigration policy and enforcement. The Executive Office of Immigration Review does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

2. What are your thoughts on the previous Administration's decision to appropriately limit the scope of asylum in *Matter of A.B.*? Do you have any goals of expanding the definition of asylum to encompass more general acts of crimes committed against individuals?

RESPONSE: This is the subject of ongoing litigation. Because I am not in the Department, I cannot comment on pending litigation.

3. If you do expand the definition of what qualifies for asylum, are you concerned this could cause an increase in unlawful immigration, something which would just further overwhelm our already strained immigration system?

RESPONSE: As a general matter, asylum is part of American law, and the Department of Justice has an obligation to apply the federal asylum laws.

4. What will the Biden Administration do to prevent family separations and reunite separated children?

RESPONSE: I would refer you to President Biden's Executive Orders on immigration policy and enforcement. The prior administration's family separation policy was a travesty. If confirmed, I look forward to working with other Department leaders and career lawyers to help reunite separated children and their families.

5. What actions will you take to reduce the backlog of immigration cases? Additionally, for those who have final orders of removal, what steps will you take, in coordination with the Department of Homeland Security, to actually effectuate their removal?

RESPONSE: The Department's Executive Office for Immigration Review, which conducts immigration court proceedings, does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

Sanctuary Cities

1. I believe very strongly that sanctuary city policies are misguided and dangerous. It is incomprehensible that we should be releasing dangerous criminal aliens back into our communities. For many years we have seen sheriffs across our nation, including some in the State of North Carolina, who have ignored the notification and detainer requests made by federal ICE agents. For example in 2019, Mecklenburg County's Sherriff in North Carolina ignored over 200 detainer requests. These reckless actions have led to criminal aliens being released back into our communities and jeopardizing public safety.

Do you agree with me that sanctuary city policies are a threat to public safety, and that it is unwise for sheriffs to ignore detainer requests which release criminal aliens back in tour communities? If not, why?

RESPONSE: I have not studied these specific incidents. As a general matter, however, the Department's commitment to protecting public safety includes not only enforcing the law but also ensuring the safety and security of all communities. If confirmed as Associate Attorney General, I will work to ensure that the Department abides by existing laws and also works collaboratively with state and local jurisdictions and law enforcement to promote public safety and fair treatment.

2. The previous administration attempted to stop sanctuary city policies by limiting access to federal grant funding for sanctuary cities. The Justice Department previously asked the Supreme Court to hear three cases to determine whether federal funds may be conditioned on whether sanctuary cities comply with federal immigration enforcement. The Justice Department changed its position, and the Supreme Court agreed to drop these cases.

What is the Justice Department's current position on whether the federal government has the authority to condition federal grant funds on whether jurisdictions comply with federal immigration law?

RESPONSE: I am not presently at the Department and so I have not been involved in these matters. If confirmed, I look forward to learning more and ensuring that the Department's approach is faithful to our laws.

Deportation Moratorium

1. As you know, the Department of Homeland Security issued a memorandum on January 20 that put in place a ban on deportation for 100 days. Currently there is an injunction filed in a federal district court in Texas preventing it from going into effect. If this injunction is lifted, it may exempt dangerous criminal aliens from being deported. Do you believe this is a wise policy by the Department of Homeland Security? More importantly, do you think this policy is even legal?

RESPONSE: This is the subject of ongoing litigation. Because I am not in the Department and not privy to conversations concerning these matters, I am not in a position to comment.

2. Do you believe that sanctuary city policies will shield dangerous criminal aliens who are released back in to communities because of this moratorium? What will the impact of this be on public safety?

RESPONSE: This is the subject of ongoing litigation. Because I am not in the Department and am not privy to conversations concerning these matters, I am not in a position to comment.

3. If you are confirmed, what action will the DOJ take to protect American citizens if criminal aliens are released into communities because of the moratorium?

RESPONSE: Attorney General Garland has pledged to continue and strengthen the Department's work to protect our Nation's communities from crime, regardless of the source. The Department's Criminal Division does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

International Parental Child Abduction

1. I have a specific interest in the issue of international parental child abduction, where one parent will unlawfully kidnap an American citizen child to another country. Many of these countries often refuse to return the children. This practice is devastating to left-behind parents, who must navigate international law to get their children returned. Will you make this issue a top priority if you are confirmed?

RESPONSE: This is an important and deeply troubling issue. Attorney General Garland has pledged to further strengthen the efforts the Department has undertaken to work with left-behind parents and advocacy organizations to return every child kidnapped abroad. These matters are handled by the Department's Criminal Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

2. In your career how much have you engaged with the issue of parental child abduction either through individual cases or broader policy?

RESPONSE: I have not had the occasion to work on the issue of parental child abduction. Although the prosecution of these matters will not be within my supervisory purview if confirmed as Associate Attorney General, I will work with other Department leaders and career lawyers on these incredibly important issues, as appropriate.

3. Are you committed to working with left-behind parents to return each and every child kidnapped abroad? What steps will you take, yourself, to engage directly with left behind parents and their advocacy organizations?

RESPONSE: These matters are handled by the Justice Department's Criminal Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

4. How will you use your position to prevent and resolve cases of international parental child abduction? Will you commit to supporting US Attorneys and DOJ staff to aggressively prosecute cases of international parental child abduction?

RESPONSE: These matters are handled by the Justice Department's Criminal Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

5. Preventing parental child abduction and resolving cases requires an interagency process between the DOJ, State, and DHS. How will you work with your colleagues at other agencies to reunite kidnapped children with their left-behind parents?

RESPONSE: These matters are handled by the Justice Department's Criminal Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

6. Are you willing to utilize extradition as a tool to bring those who kidnap children to justice in the United States?

RESPONSE: These matters are handled by the Justice Department's Criminal Division, which does not report to the Associate Attorney General. If confirmed, I will work with other Department leaders and career lawyers on these issues as appropriate.

First Amendment Issues

1. Over the past few months, Americans have needed their faith and the support that comes with their faith communities, but some governors have prohibited faith communities from gathering to worship. In many cases, the restrictions on religious gatherings have been much stricter than the requirements to go to the local Walmart. Is there a difference between Americans' right to assemble and participate in peaceful protest and their right to practice their religion?

RESPONSE: The First Amendment guarantees the right to assemble in peaceful protest and the right to the free exercise of religion. Those rights protect different activities, but both are fundamental to our constitutional structure.

2. If you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution's First Amendment and in other federal laws, including the Religious Freedom Restoration Act. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department's Civil Rights Division. In addition to overseeing the Division's enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed. If confirmed, I will faithfully uphold all rights guaranteed by the Constitution and other federal laws—including religious freedoms—to the fullest extent of the law.

3. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit that the Department of Justice will not support any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

RESPONSE: Religious freedom is a founding freedom of the United States protected by the First Amendment of the Constitution and federal laws, including the Religious Freedom Restoration Act. If I were confirmed and asked to consider an amendment to a statute, including the Religious Freedom Restoration Act, I would carefully review all of the relevant legal and policy issues, and consult Justice Department leaders and career staff, to help formulate the Department's position.

4. In a 2007 opinion, the Office of Legal Counsel affirmed that a religious organization that administers a federal grant retains its right, under the Civil Rights Act of 1964 and the Religious Freedom Restoration Act, to hire staff who agree with its religious mission.

Despite pressure from outside groups, the Obama Administration refused to rescind that opinion. If confirmed, will you support continuing the Obama Administration's policy of leaving that opinion in place?

RESPONSE: I have not studied the referenced Office of Legal Counsel opinion. If I were confirmed and asked to consider those issues, I would carefully review the relevant facts and law; consult with career staff and Department leaders; consider any relevant Department practices and procedures; and reach a conclusion based on my best interpretation of the law.

5. Is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

RESPONSE: The First Amendment protects speech and other expressive activity. It does not protect theft, arson, property damage, or violence.

Second Amendment

1. President Biden repeatedly promised during his campaign that on his first day in office he would send a bill to Congress repealing liability protections on gun manufacturers, closing the background check loophole and waiting period. I am pleased that he did not actually do this on his first day in office. Can you commit to this Committee today that you will not take any actions to limit liability protections for gun manufactures, expand the background check requirements or extend the waiting period beyond what is mandated by Congress—unless Congress passes a law touching on one of these subjects?

RESPONSE: As Attorney General Garland has explained, the role of the Justice Department in matters of policy is to advance the policy program of the President and the administration as long as it is consistent with the law. President Biden has been a strong supporter of, and advocate for, gun safety measures throughout his professional life. Like Attorney General Garland, if confirmed I would not adopt or support any policy that is inconsistent with federal law, including the Second Amendment and the statutes enacted by Congress.

2. President Biden selected Kristen Clarke to lead DOJ's Civil Rights Division. Yet in publicly accessible tweets issued on July 16, 2019, Ms. Clarke lauded the late Justice John Paul Stevens for calling for the repeal of the Second Amendment. Does it concern you at all that President Biden's choice of DOJ's Civil Rights Division supports repealing a constitutional provision that protects an individual civil right?

RESPONSE: If confirmed, I will uphold all provisions of the Constitution, including the Second Amendment. I agree with Attorney General Garland that Kristen Clarke is a terrific nominee to run the Civil Rights Division, and that if she is confirmed, she will likewise faithfully uphold all provisions of the Constitution.

3. What will you do if you are confirmed to ensure that Americans feel confident that DOJ will protect their Second Amendment rights and ensure Ms. Clarke doesn't use her possible position leading the Civil Rights Division to attack individual gun owners?

RESPONSE: If confirmed, I will uphold all provisions of the Constitution, including the Second Amendment. I agree with Attorney General Garland that Kristen Clarke is a terrific nominee to run the Civil Rights Division, and that if she is confirmed, she will likewise faithfully uphold all provisions of the Constitution.

Gunfire Protection

1. It is increasingly clear that technology provides very useful tools in crime fighting and crime prevention, especially when they are in an integrated system. I would like to see Federal support for these technologies increased. Most gunshot incidents, for example, go unreported to local law enforcement. Gunfire detection and location technology where it has been deployed, including communities in my state, has helped local law enforcement respond to more gunshot incidents, and in a safer and timely way. This enables police to collect the shell casings, interview witnesses, and sometimes catch a fleeing suspect. When those shell casings are run through another technology, the National Integrated Ballistic Information Network (NIBIN), law enforcement agencies can determine if the gun has been used in other crimes and thus focus their investigation. The technology also facilitates a faster emergency medical response for gunshot victims. The use of cameras in public spaces is another valuable tool. Will you support increased Federal resources to assist state and local governments in deploying these kinds of technologies?

RESPONSE: Like Attorney General Garland, I support law enforcement using technology appropriately and effectively to investigate, reduce, and combat crime. I have worked collaboratively with law enforcement leaders and advocated for greater resources for the police where appropriate. Because I am not in the Justice Department, I am not currently aware of Department resources available for the purposes you have specified, but if confirmed, I share Attorney General Garland's commitment to learning more about ways the Department can provide appropriate support while protecting civil liberties.

Pastor Cao

1. I'd like to ask about the case of Pastor Cao. Pastor Cao is a lawful permanent resident who lives in North Carolina. He's been arbitrarily detained by the Communist Chinese Government since March 2017 and is currently being held in Kumming Prison. My understanding is that he is on the U.N. Working Group on Arbitrary Detention's list of people who should be immediately released. Will you commit to me to do everything in your power to secure Pastor Cao's release, including raising his unlawful detention each and every time you meet with your Chinese counterparts?

RESPONSE: I am not familiar with this matter. Attorney General Garland has committed to reviewing the matter. If confirmed, I will work with him and others on the matter as appropriate.

Prohibiting the Use of “Slush Fund Settlements”

1. As you may know, the Obama Administration had instituted a policy where legal settlements between the DOJ and companies were used to fund third-party, special interest groups that were not parties to the litigation. This practice, required by the Department as a condition for settling a case, has been called “slush fund settlements.”

In some cases, the Department required donations that restored funding that Congress had specifically cut. The Department justified “slush fund settlements” by claiming that business defendants were “voluntarily” making these third-party payments as part of settling claims. But many of these companies were boxed into accepting these types of settlements because they had a tremendous amount of liability on the line if they were to litigate the matter, in addition to the risk of losing government licenses and contracting permits. In reality, these companies never had a choice.

In 2017, the Trump Administration forbade this practice; and last year, the Department incorporated this ban into the Justice Manual (85 FR 81409). The Biden Administration recently announced that it is reviewing the bar on this potentially unlawful and unethical practice. Will you commit to oppose the reinstatement of this potentially unlawful and unethical practice if you are confirmed?

RESPONSE: I understand that Department of Justice regulations currently govern when settlements may properly include payments to third parties. *See* 28 C.F.R. § 50.28. I understand the importance of these guardrails and will comply with these regulations. I do not know the status of any review of these regulations. If confirmed, I would want to understand any concerns motivating such a review—to understand what the equities are and what the arguments are on all sides.

Maintaining the Corporate Enforcement Policy

1. Over the past four years, the Department has updated and reformed the enforcement of the Foreign Corrupt Practices Act (FCPA), a process that began under the Obama Administration. Specifically, in 2016, under Attorney General Loretta Lynch, the Department announced an FCPA “pilot project,” which was designed to promote voluntary self-disclosure, cooperation with the government, and remediation of violations in exchange for mitigated penalties. In 2017, the Department enhanced this pilot project and incorporated it into the U.S. Attorneys’ Manual as the FCPA Corporate Enforcement Policy (CEP); the Department has since stated that it will apply the principles of the CEP to contexts other than the FCPA.

It appears that these reforms are having a positive effect on compliance. If you are confirmed, will you continue to support and improve the Corporate Enforcement Policy in a way that appropriately incentivizes the private sector to invest voluntarily in compliance programs and cooperate with the Department?

RESPONSE: I am committed to the vigorous enforcement of the Foreign Corrupt Practices Act and other federal anti-corruption laws, including efforts to foster voluntary compliance and cooperation with the Department of Justice. I have not studied the Corporate Enforcement Policy. If I am confirmed, I will look forward to consulting with the relevant Department officials to learn more about that initiative and to identify ways in which it might be further supported or improved.

Safeguards on the Use of Sub-regulatory Guidance

1. Guidance documents, also known as sub-regulatory guidance, are a way for agencies to announce policy changes, establish new procedures, and sometimes set forth new obligations on the private sector. This guidance often takes a variety of forms, such as Frequently Asked Questions, compliance memos, and other tools that can help agencies accomplish their goals but can unfairly impose burdens on private parties. Sub-regulatory guidance does not have to comply with statutory law or be formally promulgated as rules in accordance with the Administrative Procedure Act (most notably the notice and comment obligations). Agencies often issue it without any restrictions.

Since agencies are not required to notify the public when issuing new guidance, it may be impossible for private parties to comply with it. This is particularly problematic when the “guidance” purports to be binding, even though it is not based in law or regulation. Worse still, agencies have increasingly sought to bring enforcement actions predicated on it.

The abuse by the government of sub-regulatory guidance prompted the Trump Administration to act. In 2017, former Attorney General Sessions issued a memo rescinding existing guidance documents that went too far and prohibiting the Department from issuing new ones that have the effect of adopting new regulatory requirements or amending the law. On January 25, 2018, former Associate Attorney General Rachel Brand released the Brand Memo, which forbids the Department from treating sub-regulatory guidance as binding legal requirements in certain cases. The Department later broadened the Brand Memo and incorporated it into the Justice Manual, so it covered all civil and criminal enforcement actions.

In October 2019, the last Administration made the Department’s important reforms in this area apply across the Executive Branch; it issued two Executive Orders (EO), EO 13891 and EO 13982, which respectively required agencies to treat guidance documents as “non-binding both in law and in practice” and limited the ability of agencies to enforce standards of conduct that were not publicly stated or issued in formal rulemaking. These EOs also required transparency to the American people—guidance documents now had to be posted on-line, and the government had to receive Americans’ input on the guidance it was issuing.

It is troubling that on his first day in office, President Biden rescinded Executive Orders 13891 and 13982. However, the particular reforms and safeguards that are designed to prevent the unfair application and abuse of sub-regulatory guidance are still policy at the Department. Do you commit to preserving these important safeguards at the Department if you are confirmed?

RESPONSE: I am not familiar with the details of the memos issued by Attorney General Sessions and Associate Attorney General Brand, or of the corresponding provisions of the Justice Manual. In general, however, enforcement actions must be based on a violation of a statute or a “legislative rule” that has “the force and effect of law.” *Perez v. Mortgage*

***Bankers Ass’n*, 575 U.S. 92, 95 (2015) (citation omitted). By definition, the guidance documents referenced in the question lack that force and effect. A violation of a guidance document thus cannot, by itself, be the basis for an enforcement action. Guidance documents may, however, serve valuable functions. For example, they can “advise the public’ of how the agency understands, and is likely to apply, its binding statutes and legislative rules.” *Kisor v. Wilkie*, 139 S. Ct. 2400, 2420 (2019) (plurality opinion). If confirmed, any action I take in this area will be consistent with these principles.**

Transparency of Third-Party Litigation Funding in False Claims Act Cases

1. As you may know, third-party litigation funding (TPLF) is a growing phenomenon in the United States. TPLF involves third-party financiers investing in litigation for a cut of any final settlement or judgment. For many cases involving TPLF, the existence of a TPLF agreement is never required to be disclosed to the opposing party or even to the court, which means that funders may be exercising strategic control over the litigation instead of the actual plaintiffs.

This practice is especially problematic in the context of *qui tam* False Claims Act (FCA) litigation brought by relators. This is because *qui tam* relators stand in the shoes of the government. In these cases, the Department has little insight into the extent to which TPLF funders are backing *qui tam* cases that the Department is investigating, litigating, or otherwise monitoring. These non-party funders may be exercising substantial control over relators' litigation and settlement decisions in cases that were brought in the name of the United States.

Third party litigation funders and the government may have entirely divergent interests. Because of this possible divergence of interests, the Department has the right and the need to know if third-party funders are behind *qui tam* actions.

To achieve this desired level of transparency, the Department recently began instructing its attorneys to ask a series of questions at each relator interview designed to reveal whether third party funders are involved in the underlying litigation. Do you agree that TPLF raises particular ethical issues in *qui tam* FCA cases? If you are confirmed, will you continue to require DOJ attorneys to ask these questions at each relator interview?

RESPONSE: The False Claims Act, and its *qui tam* provisions, play a critical role in the federal government's effort to ensure that those who do business with the government do so honestly. The False Claims Act is a vital tool for fighting fraud and abuse involving federal funds. The Department publicly reported that in fiscal year 2020 it recovered over \$2.2 billion under the Act, and that a significant portion of these recoveries were attributable to cases filed under the Act's *qui tam* provision. If I am confirmed as Associate Attorney General, I will work to ensure that the Department supports the pursuit of meritorious whistleblower claims on behalf of the United States.

National Drug Takeback Day

In 2020, the DEA was only able to hold one National Drug Take Back Day due to COVID-19. The need for the Take Back program is evidenced by the fact that, despite the pandemic challenges, the DEA collected nearly 493 tons of unwanted or expired medication that had been disposed of in more than 4,500 collection sites across the country.

These are a great example of the private sector, local communities, the States, and federal authorities all working together to address a national problem. The DEA recently announced the next Take Back day will be April 24th. But extreme stress Americans are dealing with during the COVID-19 pandemic and with many children still at home where these drugs might be more accessible, I suggest you consider scheduling additional Take Back days this year.

If confirmed, will you commit to: examining the important role the DEA plays in helping the public dispose of these drugs; work with the DEA and others to schedule additional Take Back days are warranted and feasible; and determine what, if anything, is needed to schedule more?

RESPONSE: I understand the need for safe and effective ways for Americans to dispose of unwanted or expired prescription medication, like the National Drug Take Back Day. If I am confirmed as Associate Attorney General, I will examine the important role the DEA plays in helping the public dispose of these drugs, and will work with the DEA and others to determine whether additional Take Back days, or other disposal efforts, are warranted and feasible.

**Senator Marsha Blackburn
Questions for the Record
Senate Judiciary Committee
“Nomination of Vanita Gupta to be Associate Attorney General of the United States”**

1. Did you ever oppose the execution of Dylan Roof?

RESPONSE: Justice Department deliberations are confidential and it would be not be appropriate for me to discuss deliberations within the Department on the Dylann Roof case or any other case.

2. Did you ever take the position that Dylan Roof should not be executed?

RESPONSE: Justice Department deliberations are confidential and it would be not be appropriate for me to discuss deliberations within the Department on the Dylann Roof case or any other case.

3. On June 24, 2020, you tweeted “DC should be a state. Pass it on.” Do you support DC statehood?

RESPONSE: Yes.

4. While you were in charge of the Department of Justice (DOJ) Civil Rights Division in the Obama Administration, you oversaw web access regulatory policy consistent with the Americans with Disabilities Act (ADA). The DOJ was going to issue new rules to mandate compliance with a voluntary, private-industry developed technical standard for website accessibility but ended up not following through due to cost concerns. The failure to issue clarifying rules instead created regulatory uncertainty for businesses. DOJ also continued to pursue enforcement actions in the absence of any rule-clarifying action. The Trump administration’s letter to Congress in 2019 clarified that, “Noncompliance with a voluntary technical standard for website accessibility does not necessarily indicate noncompliance with the ADA.” Going forward, do you still intend to pursue enforcement actions and mandate costly technical standards on private companies and universities?

RESPONSE: If confirmed, I would work to ensure that the Department’s decisions in all enforcement actions, including under the Americans with Disabilities Act (ADA), are based on a careful review of the relevant facts and laws, and made in consultation with other Department leaders and career lawyers. Because I am not presently at the Department, I am not aware of the details regarding the Department’s most recent position on technical standards under the ADA. I understand why stakeholders need clarity and guidance. If confirmed, I look forward to working with career officials to learn more about this issue.

5. Can a website be accessible and usable by people who are blind or visually impaired without being fully compliant with the Web Content Accessibility Guidelines (WCAG) 2.0 or 2.1?

RESPONSE: As you note in your prior question, the Web Content Accessibility Guidelines are private, voluntary guidelines that provide technical standards for website accessibility. I have not studied the Guidelines in several years or in sufficient detail to form a position on your question. If confirmed, I hope to do so, in consultation with career staff at the Justice Department.

6. You have tweeted, “When Trump brags about judicial confirmations, he’s bragging about a historically nondiverse, unqualified group of judges—many with anti-civil rights records.” You also expressed disdain for holding hearings for “a white judge to sit on only all-white federal appeals courts.” You have professed that “judicial diversity must be a big priority for future presidents.” Given your recent comments regarding the overrepresentation of “white men” in positions of power, why did you oppose the nominations of federal judges who are women of color, such as Judge Ada Brown and Judge Neomi Rao?

RESPONSE: I have tremendous respect for judges, and I take very seriously the independence and integrity of the federal judiciary. For decades, including during my tenure there, the Leadership Conference has reviewed the civil rights records of judicial nominees in Republican and Democratic administrations. When it opposed a nominee, it provided a public statement explaining its reasons, which were based on a holistic evaluation of a nominee’s record on civil rights. The Leadership Conference did not oppose the vast majority of the prior administration’s judicial nominees. As the head of the Leadership Conference, I often communicated the organization’s position on judicial nominees.

7. Last year, in cities across the country, we saw violence and attacks directed at police spike because of the divisive rhetoric from the “defund the police” crowd. Do you condemn the “defund the police” movement?

RESPONSE: I do not support defunding the police. Throughout my career, I have supported law enforcement, working collaboratively with law enforcement leaders and advocating for more funding for the police where appropriate, including for officer wellness and safety programs, body-worn cameras, and equipment and data systems upgrades. Based on feedback from law enforcement and other stakeholders, in discussions over many years, I have supported community-based interventions for people with mental illness or substance use disorders, for example, to relieve the burden on law enforcement and to provide alternatives that can keep officers and community members safe. During my time leading the Civil Rights Division I testified before the Senate in support of additional funding for law enforcement funding programs.

I am proud that my nomination has been supported by major law enforcement organizations, including the National Fraternal Order of Police, the National Sheriffs’ Association, Major County Sheriffs of America, the Major Cities Chiefs Association, the International Association of Chiefs of Police, the Police Executive Research Forum, the Federal Law Enforcement Officers Association, the National Organization of Black Law

Enforcement Executives, the Hispanic American Police Command Officers Association, and the National Association of Women Law Enforcement Executives.

8. Do you condemn statements that we should abolish ICE?

RESPONSE: The President will set policies in the area of immigration. He does not support abolishing ICE. As Attorney General Garland explained, the Justice Department’s role with respect to policy is to work to implement the Administration’s policy preference if it is consistent with the Department’s objective assessment of the law.

9. On January 7, 2021, you retweeted Vice-President Harris’ tweet: “We have witnessed two systems of justice: one that let extremists storm the U.S. Capitol yesterday, and another that released tear gas on peaceful protestors last summer. It’s simply unacceptable.” However, cities across the country witnessed peaceful protest turn violent during the summer of 2020—along with numerous attacks directed at police officers and instances of vandalism and destruction to iconic sites such as St. John’s Church, the Lincoln Memorial, the World War II Memorial and the Brigadier General Casimir Pulaski statue in Freedom Plaza. Do you condemn all violent acts, including the ones committed during 2020 Black Lives Matter (BLM) protests?

RESPONSE: Violence is never appropriate. The First Amendment only protects peaceful protests, and the Justice Department must enforce the law and protect communities from violence regardless of who engages in it.

10. In your opposition to the Little Sisters of the Poor and their fight to preserve religious freedom, you stated that “religious freedom does not create a license to discriminate.” Do you continue to believe the First Amendment lets the government force people of faith and Catholic nuns to pay for a medication that violates their religious beliefs?

RESPONSE: Religious liberty is personally important to me, and it is a principle that is enshrined in the Constitution’s First Amendment and in other federal laws. I have long worked to promote religious liberty, and I made that a priority when I led the Justice Department’s Civil Rights Division. In addition to overseeing the Division’s enforcement of laws prohibiting religious discrimination, I convened an interagency community engagement initiative to promote religious liberty that involved stakeholders throughout the Department and across the federal government. Our final report was released in an event at the White House and it relayed what we learned at community roundtables that we led across the country—detailing the challenges we identified and the recommendations we proposed.

The Supreme Court issued its opinion in *Little Sisters*. If confirmed, it would be my mandate to fully and fairly enforce all federal laws, consistent with Supreme Court precedent, including both federal anti-discrimination laws and laws that protect religious liberty.

11. According to a Wall Street Journal article citing U.S. Customs and Border Protection, from October 2020 through January 2021, more than 19,000 illegal immigrant children, mostly from Mexico, Honduras, El Salvador and Guatemala entered the U.S. unlawfully. If confirmed as Associate Attorney General, how do you plan to remedy the rise in illegal minors flooding the Southern Border?

RESPONSE: It is my understanding that the Administration is undertaking a comprehensive review of our nation’s immigration policies. If I am confirmed, I would work to ensure that the Department participates in a whole-of-government effort to reform our immigration system in a way that protects communities, secures our borders, and protects our national interests.

12. Please explain the difference between a “migrant child facility” and the detention structures used by the Trump administration.

RESPONSE: It is my understanding that the Administration is undertaking a comprehensive review of our nation’s immigration policies. If I am confirmed, I would work to ensure that the Department participates in a whole-of-government effort to reform our immigration system in a way that protects communities, secures our borders, and protects our national interests.

13. You tweeted, “Bravo. Walmart will stop selling handguns and prohibiting open carry at its stores.” Do you believe in abolishing open carry of handguns in retail stores nationwide?

RESPONSE: My view of the Second Amendment is controlled by the *Heller* and *McDonald* decisions. In *Heller*, Justice Scalia’s opinion for the Court held that the Second Amendment confers “an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. In *McDonald*, the Court held that the right guaranteed by the Second Amendment is a fundamental right that applies to the states as well the federal government. If confirmed, I will take an oath, as all Department employees do, to support and defend the United States Constitution, and that includes the Second Amendment.

14. Last fall, DOJ filed a suit against Facebook for discriminating against American workers in their hiring. The lawsuit alleged that Facebook failed to place qualified American workers in over 2,000 positions. Instead these jobs were given to foreign professionals via H1-B visas. If you are confirmed as Associate Attorney General, do you anticipate any changes to the direction of this case?

RESPONSE: Because I am not in the Department, I am not privy to any ongoing conversations about the matter. If confirmed, I look forward to learning more, and to continuing to ensure that the Department’s litigating decisions are driven by the facts and the law, without regard to partisan or other improper considerations.

15. Will you maintain your commitment to enforce this country's laws at a time when so many qualified Americans are facing unemployment yet American companies like Facebook won't prioritize hiring U.S. citizens?

RESPONSE: The role of the Department of Justice is to vigorously and evenhandedly enforce the law. If I am confirmed, I will seek to ensure that the Department fulfills that responsibility.