

**CONFIRMATION HEARING ON THE
NOMINATION OF HON. LORETTA E. LYNCH
TO BE ATTORNEY GENERAL
OF THE UNITED STATES**

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

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JANUARY 28 and 29, 2015
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**CONFIRMATION HEARING ON THE
NOMINATION OF HON. LORETTA E. LYNCH
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OF THE UNITED STATES**

WEDNESDAY, JANUARY 28, 2015,

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room SH-216, Hart Senate Office Building, Hon. Charles E. Grassley, Chairman of the Committee, presiding.

Present: Senators Grassley, Hatch, Sessions, Graham, Cornyn, Lee, Cruz, Flake, Vitter, Perdue, Tillis, Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, and Blumenthal.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Chairman GRASSLEY. Good morning. I welcome everyone to this very, very important hearing. Before we start, I would like to state a few things. These are some ground rules, pretty much the same as what former Chairman and my friend Senator Leahy and others have stated in the past.

I want everyone to be able to watch the hearing without obstruction. If people stand up and block the view of those behind them or speak out of turn, it is not fair or considerate to others. So officers would then remove those individuals. I know that there is a lot to protest regarding this administration's policies, but this is not the time or place to do it.

Before I turn to our opening statements, I want to go over a couple of housekeeping items and explain how we are going to proceed. Senator Leahy and I will give our opening statements. Then I will call on Senators Schumer and Gillibrand to introduce the nominee. Following Ms. Lynch's opening remarks, we will begin with the first round of questions in which each Senator will have 10 minutes. After the first round, we are going to do 8-minute rounds of questions. I want everyone to know that I am prepared to stay here as long as Members have questions that they would like to ask.

I think this is the most fair way to proceed both to the responsibilities of the Senate and Senators and, most importantly, to the nominee who has to sit here through all of this and answer our questions. And I think we all know that this is a very important position in the Cabinet, and we should do what we can to move it

along within our rules. We have a lot of ground that we want to cover in live questioning.

One final note on scheduling. I would like to take a short break of maybe 45 minutes sometime around 12:30 or 1 o'clock, and I know that we have a series of stacked votes this afternoon in regard to, I think, 18 amendments we have to vote on. The plan right now is to keep this hearing going even though it may be a very chaotic way to do things and maybe not as respectful to the position of Attorney General as it ought to be, but I do not know how else to get through the process to get every question asked that wants to be asked. So I would ask that all of my colleagues remain very flexible and keep it going, and that means some accommodation by Members on my side of the aisle to chair when I cannot be here and am over there voting.

With that, I am going to turn to my opening statement, then immediately go to Senator Leahy.

Ms. Lynch, I have had a chance to talk to you privately on two occasions. I welcome you to the Senate Judiciary Committee. It is a very big day for you and especially for family and friends that are proud of you. I congratulate you on your nomination.

You have already been confirmed by the Senate as U.S. Attorney, but the process involved to serve as the 83rd Attorney General is a bit more rigorous. For one thing, U.S. Attorneys do not even have hearings, let alone one like this.

So my hope is that we discuss some of the most important matters facing our Nation, and in the process of doing that, then we will get to know you a bit better. The fact of the matter is this nomination comes at a pivotal time for the Department of Justice and for our country. And as I discuss some of those things, those are probably things you have had nothing to do with. But you have an opportunity to make some changes.

The next Attorney General will face some very difficult challenges, from combating cybercrime, to protecting our children from exploitation, to helping fight the war on terror.

But I am not just concerned about the tough decisions that come with the office. There are challenges facing the Department of Justice that go to the heart of our system of Government.

How about restoring faith in the bedrock principles like respect for the rule of law and the fair and evenhanded application of those laws?

How about restoring respect for the co-equal branches of Government?

How about taking care that the law is faithfully executed and not rewriting it?

How about the Department of Justice honoring, once again, its longstanding duty to vigorously defend our Nation's laws—even when political appointees disagree with the policy?

Then there is the Office of Legal Counsel. I am interested in returning that office to its rightful place as the impartial "crown jewel" of the Justice Department. Its opinions should be firmly rooted in the Constitution's text, neutral interpretation of statutes, and sound judicial precedent. They should not be transparently self-serving attempts to justify whatever the President or an Attorney General wants to do for political reasons.

And let me say it right here: The Office of Legal Counsel should be sharing with the American public the opinions it is providing to the President, especially when they supposedly sanction the unprecedented authority he claims to possess. And I am going to work to see that it does. The public's business ought to be public.

Transparency, I believe, and, in fact, does bring accountability.

These ideals and principles are foundational to the Republic. But ideals and principles are not simply academic, and they do not exist in a vacuum.

Over the last few years, public confidence in the Department's ability to do its job without regard to politics has been shaken, with good reason.

It is not just Republicans who see the problem or who recognize it has real-world effects on our own fellow Americans. The Department's own Inspector General listed as one of its top management challenges "Restoring Confidence in the Integrity, Fairness, and Accountability of the Department."

The IG cited several examples, including the Department falsely denying basic facts in the Fast and Furious controversy. The Inspector General concluded this "resulted in an erosion of trust in the Department." In that fiasco, our Government knowingly allowed firearms to fall into the hands of international gun traffickers, and it led to the death of Border Patrol Agent Brian Terry.

And then, after Congress called on the leadership of the Department to account for this foolish operation, what did they do? Did they apologize to the family and rush to uncover the truth?

Quite the opposite. They denied, spun, and hid the facts from Congress and the American people. They bullied and intimidated whistleblowers, members of the press, and anyone who had the audacity to investigate and to uncover the truth.

The Department has also failed to hold another Government agency accountable: the Internal Revenue Service. We watched with dismay as that powerful agency was weaponized and turned against individual citizens. And why? What exactly did these fellow citizens do to make their Government target them? They had the courage to get engaged and speak out in defense of faith, freedom, and our Constitution. And for that, they then were targeted by the IRS.

What was the Justice Department's reaction to the targeting of citizens based on political beliefs? Well, they appointed a campaign donor to lead an investigation that has not gone anywhere and called it then a day. That simply is not good enough.

Meanwhile, the Department's top litigator, the Nation's Solicitor General, is arguing in case after case for breathtaking expansions of Federal power.

I would like to have you consider this: Had the Department prevailed in just some of the arguments that it pressed before the Supreme Court in the last several years, there would be essentially no limit on what the Federal Government could order States to do as a condition of receiving Federal money.

Another case, the Environmental Protection Agency could fine a homeowner \$75,000 a day for not complying with an order and then turn around and deny that homeowner any right to challenge the order or those fines in court when the order is issued.

The Federal Government could review decisions by religious organizations regarding who can serve as a minister.

The Federal Government could ban books that expressly advocate for the election or defeat of political candidates. And the Fourth Amendment would not have anything to say about the police attaching a GPS device to a citizen's car without a warrant and constantly tracking their every movement for months and years.

These positions are not mainstream, in my judgment. At the end of the day, the common thread that binds all these challenges together, in my judgment, is a Department of Justice that is very deeply politicized. But that is what happens when an Attorney General of the United States views himself—and these are his own words—as the President's "wingman."

I do not expect Ms. Lynch and I will agree on every issue. But I for one need to be persuaded that she will be an independent Attorney General. And I have no reason to believe at this point she will not be. The Attorney General's job is to represent the American people, not just the President and not just the executive branch.

So today we will hear from Ms. Lynch. As far as I know, Ms. Lynch has nothing to do with the Department of Justice's problems that I just outlined, but as a new Attorney General, she can fix them.

Tomorrow we will hear from a second panel of witnesses, many of whom will speak directly to the many challenges facing the Justice Department.

As I listen to both panels, I will be considering whether Ms. Lynch has what it takes to fix the Obama Justice Department.

We need to get back then to first principles, and that starts with depoliticizing the Department of Justice, because the American people deserve better. So I hope Ms. Lynch can fix these flaws.

Senator Leahy.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you. I will not speak as long because I just want to focus on Loretta Lynch and not on all the problems that some may see in this country.

It is a pleasure to welcome her to this Committee. She is smart, she is tough, she is hard-working and independent. She is a prosecutor's prosecutor, and her qualifications are beyond reproach. She has been unanimously confirmed by the Senate twice before to serve as the top Federal prosecutor based in Brooklyn, New York, and I hope we have another swift confirmation for Ms. Lynch.

As U.S. Attorney for the Eastern District of New York, she has brought terrorists and cybercriminals to justice. She has obtained convictions against corrupt public officials from both political parties. She has fought tirelessly against violent crime and financial fraud. She has remained determined to protect the rights of victims.

Ms. Lynch has worked hard to improve the relationships between law enforcement and the communities they serve, and that is probably one of the reasons why her nomination enjoys strong support from both. She has prosecuted those who have committed crimes

against police officers, as well as police officers who have committed crimes. Her record shows that, as Attorney General, Ms. Lynch will effectively, fairly, and independently enforce the law.

I hope we all remember that she is the nominee for Attorney General, and that is why I am focusing on her. She was born in North Carolina, the daughter of a Baptist preacher and a school librarian, and we are honored to have members of her family here with us today. And I know you will be introducing them later.

She grew up hearing her family speak about living in the Jim Crow South, but she never lost faith that the way to obtain justice is through our legal system. And her nomination is historic. When she is confirmed as the 83rd Attorney General of the United States, she will be the first African-American woman to lead the Department of Justice.

Really, I cannot think of anyone more deserving of that honor.

She is going to lead a Justice Department that faces complex challenges. Nearly one-third of its budget goes to the Bureau of Prisons, and that drains vital resources from nearly all other public safety priorities. Think of that. A third of the budget goes to prisons.

A significant factor leading to this budget imbalance is the unnecessary creation of more and more mandatory minimum sentences. Passing new mandatory minimum laws has become a convenient way for lawmakers to claim that they are tough on crime—even when there is no evidence that these sentences keep us safer. And it is one of the reasons why we have the largest prison population in the world. It is why I oppose mandatory minimums. I hope we can find a way to face this mass incarceration problem.

And the Justice Department needs strong leadership to keep up with the rapid development of technology. We must stay ahead of the curve to prevent and fight threats to cybersecurity and data privacy. Think what it would have been like the last few days in the Northeast if a cyberterrorist could have closed down all of our electrical grids.

The growing threat of cybercrime is very real, but so is the specter of unchecked Government intrusion into our private lives, particularly dragnet surveillance programs directed at American citizens. The intelligence community faces a critical deadline this June when three sections of the Foreign Intelligence Surveillance Act are set to expire.

I believe we have to protect our national security, but we also have to protect our civil liberties which make us unique as a country. So we have to reform our Nation's surveillance laws so we can realize both goals.

The next Attorney General is going to play an essential role in protecting all Americans. All Americans. The President's selection for Attorney General, no matter who the President is, deserves to be considered swiftly, fairly, and on the nominee's own record. I believe Americans realize that a role this important cannot be used as just one more sound bite, a Washington political football. I am confident that if we stay focused on Ms. Lynch's impeccable qualifications and fierce independence, she is going to be confirmed quickly by the Senate. She deserves a fair, thoughtful, and respectful confirmation process. And the American people deserve an At-

torney General like Ms. Lynch. So I thank you for your years of public service. I look forward to your testimony.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairman GRASSLEY. For those of you who are new to a hearing, it is tradition that Senators from the home State introduce nominees from their State. So I am now going to call on Senator Schumer and then Senator Gillibrand, the Senators from New York, to do that. And since we are under such a tight schedule, if I could ask you to keep it to 5 minutes, it would be very nice. Thank you.

PRESENTATION OF LORETTA E. LYNCH, NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES, BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman. I want to thank you and Ranking Member Leahy and the Members of the Committee. It is my great privilege to introduce Loretta Lynch, a proud New Yorker and the nominee to be the next Attorney General of the United States.

Born in North Carolina, her father was a fourth-generation Baptist minister, a man who grew up in the segregated South, and her mother picked cotton when she was a girl so her daughter would never have to.

Well, their daughter grew up to be one of the keenest legal minds our country has to offer, someone who has excelled at every stage of her education and her career, while cultivating a reputation as someone who is level-headed, fair, judicious, and eminently likable. If there is an American dream story, Ms. Lynch is it. And adding to the American dream story, Ms. Lynch's late brother Lorenzo was a Navy SEAL.

Still, despite her intellectual and career achievements, Ms. Lynch has always been a nose-to-the-grindstone type, rarely seeking acclaim, only a job well done. She has earned a reputation for keeping her head down and avoiding the spotlight. Just like me.

[Laughter.]

Senator SCHUMER. At just over 5 foot and with her consistent understated approach to the public spotlight, some might underestimate Ms. Lynch. But as hundreds of criminals have learned the hard way, looks can be deceiving, and Ms. Lynch packs a powerful punch.

When you look at the breadth and depth of the cases she has handled, it is clear Loretta Lynch is law enforcement's renaissance woman. One I would mention: the Abner Louima case, where she convicted police officers who horribly abused a Haitian immigrant.

As we have seen, these types of cases can create great tension between the police and the community. But despite the high-running emotions that accompanied this notorious case, Ms. Lynch was praised by lawyers on both sides, as well as community leaders and police officials, for her judicious, balanced, and careful approach.

Mr. Chairman, Members of this Committee, in this age of global terrorism, the AG's role in national security has never been more

important. It makes apparent that the confirmation of a new Attorney General cannot and should not be delayed any longer.

Today we have already heard and will hear a lot more about issues completely unrelated to Ms. Lynch's experience and her qualifications. If anything, that just goes to show how qualified she is. No one can assail Loretta Lynch, and no one has, who she is, what she has done, and how good an Attorney General she would be. So instead some are trying to drag extraneous issues—Executive orders on immigration, the IRS—into the fray to challenge her nomination because they cannot find anything in her record to point to.

Let me be clear: Attempts to politicize this nomination, to turn this exceptional nominee into a political point-scoring exercise, are a disservice to the qualified candidate we have before us today.

I originally recommended Loretta Lynch for the position of U.S. Attorney in 1999 because I thought she was excellent. Sure enough, she was. When President Bush took office, she went to the private sector to earn some money.

But when I had the opportunity to recommend a candidate to President Obama, I was certain I wanted Ms. Lynch to serve again. So I called her on a Friday afternoon. She was happy with her life in the law firm. But I was confident that, with the weekend to think it over, she would be drawn to answer the call to public service. And sure enough, her commitment to public service was so strong that she called me back on Monday to say yes.

She passed unanimously out of the Senate twice already.

Wouldn't it be nice if we could pass her unanimously out of the Senate a third time? Based on her record, we should. Mr. President, if we cannot confirm Loretta Lynch, then I do not believe we can confirm anyone. And I would like to remind my colleagues that the President's immigration policies are not seeking confirmation today. Loretta Lynch is.

When we move to vote, hopefully sooner rather than later, you will not be voting for or against the President's policies. You will be voting on this eminently qualified law enforcement professional, first-rate legal mind, and someone who is committed in her bones to the equal application of justice for all people.

Thank you, Mr. Chairman.

Chairman GRASSLEY. Thank you, Senator Schumer.

Senator Gillibrand.

PRESENTATION OF LORETTA E. LYNCH, NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES, BY HON. KIRSTEN E. GILLIBRAND, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator GILLIBRAND. Thank you, Mr. Chairman and Ranking Member Leahy. I am honored to be here today with Senator Schumer to introduce United States Attorney for the Eastern District of New York, Loretta Lynch, as President Obama's nominee to serve as the next Attorney General of the United States.

To serve as United States Attorney General requires deep experience in the field of law. It also requires a brilliant intellect, and it requires a steady moral compass.

I met with Ms. Lynch 2 months ago, and I can tell you she meets all of those criteria. She is strong, tough, independent, and fearless, and as one of our country's most accomplished and distinguished women serving in law enforcement, I urge my colleagues to support her nomination.

She is an outstanding candidate for this job. Ms. Lynch began her service as the U.S. Attorney for the Eastern District of New York in 1990 where she rose quickly to serve as Chief of the Long Island Office and then Deputy Chief of General Crimes, and Chief of Intake and Arraignments. For 15 years, she has been a prosecutor in the U.S. Attorney's Office for the Eastern District of New York, and since 2010, she has served admirably as the United States Attorney for the Eastern District of New York. In that position, she has demonstrated a superior sense of judgment and remarkable legal expertise.

Ms. Lynch has dealt with an impressive array of cases on subjects ranging from civil rights to organized crime to terrorism. These are each issues that our new Attorney General will have to engage with constantly from Day 1 of her tenure.

Ms. Lynch's experience as a Federal prosecutor in New York will undoubtedly serve her exceptionally well in Washington. She is extraordinarily well qualified, and I believe she deserves a quick confirmation process.

Thank you, Mr. Chairman.

Chairman GRASSLEY. Thank you, Senator Gillibrand.

[Pause.]

Chairman GRASSLEY. Before you seat yourself, would you take an oath, please? Would you raise your hand? And I will give the oath. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. LYNCH. I do.

Chairman GRASSLEY. Thank you.

The Committee welcomes you, and I know that it is an honor for all of us to have you before us. But it is also an honor for you to be selected by the President, and it is quite an honor for your family. So I would ask, before you make your statement, if you would like to introduce anybody to the Committee and speak about them any way you want to.

And then if there are people that are not introduced by you that you would like to have their name in the record and you would submit their names, I would be glad to include that in the record.

So would you proceed as you choose?

Senator LEAHY. Turn your microphone on.

Chairman GRASSLEY. Yes, I think the microphone is not automatic.

**STATEMENT OF HON. LORETTA E. LYNCH, NOMINEE
TO BE ATTORNEY GENERAL OF THE UNITED STATES**

Ms. LYNCH. Thank you, Senator. Let me introduce for the record: I am delighted to welcome numerous family and friends here with me today.

I would like to introduce, first and foremost, my father, the source of my inspiration in so many ways. He is to my immediate left, the Reverend Lorenzo Lynch.

Immediately to his left is my husband, Stephen Hargrove, who has supported me in all of my endeavors, no matter how poor they make us.

[Laughter.]

Ms. LYNCH. Immediately to his left is my younger brother, the Reverend Leonzo Lynch, who is the fifth generation of ministers in a direct line in my family; and my sister-in-law, NiCole Lynch.

I am also here with several other family members and friends whom I would love to introduce, but I am informed that you have a schedule for the afternoon, so I will keep to that. But let me say to all of them how tremendously gratified I am for their support, not just today but over the years.

Chairman Grassley, Senator Leahy, distinguished Members of this Committee, I am honored to appear before you in this historic chamber, among so many dedicated public servants.

I want to thank you for your time this morning, and I also want to thank President Obama for the trust he has placed in me by nominating me to serve as Attorney General of the United States.

It is a particular privilege to be joined here today by members of my family that I have introduced, as well as the other numerous family and friends who have come to support me and for whose travel and service I am so appreciative.

Mr. Chairman, one of the privileges and, in fact, one of my favorite things in my position as United States Attorney for the Eastern District of New York is welcoming new attorneys into my office and administering to them the oath of office. It is a transformative moment in the life of a young prosecutor and one that I actually remember well.

And as they stand before me, prepared to pledge their honor and their integrity, I remind them that they are making their oath not to me, not to the office, not even to the Attorney General, but to our Constitution, the fundamental foundation for all that we do. It is to that document and the ideals embodied therein that I have devoted my professional life. And, Senators, if confirmed as Attorney General, I pledge to you today and to the American people that the Constitution, the bedrock of our system of justice, will be my lodestar as I exercise the power and the responsibility of that position.

I owe so much to those who have worked to make the promise of that document real for all Americans, beginning with my own family. All of them—and so many others—have supported me on the path that has brought me to this moment, not only through their unwavering love and support, which is so beautifully on display today, but through their examples and the values that have shaped my upbringing.

My mother, Lorine, who was unable to travel here today, is a retired English teacher and librarian for whom education was the key to a better life. She still recalls people in her rural North Carolina community pressing a dime or a quarter into her hands to help support her college education. As a young woman, she refused to use segregated restrooms because they did not represent the Amer-

ica in which she believed. She instilled in me an abiding love of literature and learning and taught me the value of hard work and sacrifice.

My father, Lorenzo, who is here with me today, is a fourth-generation Baptist preacher who in the early 1960s opened his Greensboro church to those planning sit-ins and marches, standing with them while carrying me on his shoulders. He has always matched his principles with his actions—encouraging me to think for myself, but reminding me that we all gain the most when we act in service to others.

It was the values my parents instilled in me that led me to the Eastern District of New York, and from my parents I gained the tenacity and resolve to take on violent criminals, to confront political corruption, and to disrupt organized crime. They also gave me the insight and the compassion to sit with the victims of crime and share their loss. Their values have sustained me as I have twice had the privilege—indeed, the honor—of serving as United States Attorney, leading an exceptional office staffed by outstanding public servants, and their values guide and motivate me even today.

Senators, should I be confirmed as Attorney General, my highest priorities will continue to be to ensure the safety of all of our citizens, to protect the most vulnerable among us from crime and abuse, and to strengthen the vital relationships between America's brave law enforcement officers and the communities they are entrusted to serve.

In a world of complex and evolving threats, protecting the American people from terrorism must remain the primary mission of today's Department of Justice.

If confirmed, I will work with colleagues across the executive branch to use every available tool to continue disrupting the catastrophic attacks planned against our homeland and to bring terrorists to justice.

I will draw upon my extensive experience in the Eastern District of New York, which has tried more terrorism cases since 9/11 than any other office. We have investigated and prosecuted terrorist individuals and groups that threaten our Nation and its people, including those who have plotted to attack New York City's subway system, John F. Kennedy Airport, the Federal Reserve Bank of New York, and U.S. troops stationed abroad, as well as those who have provided material support to foreign terrorist organizations.

And I pledge to discharge my duties always mindful of the need to protect not just American citizens, but American values.

If confirmed, I intend to expand and enhance our capabilities in order to effectively prevent ever-evolving attacks in cyberspace, to expose those wrongdoers and bring those perpetrators to justice as well.

In my current position I am proud to lead an office that has significant experience prosecuting complex, international cybercrime including high-tech intrusions at key financial and public sector institutions. If I am confirmed, I will continue to use the combined skills and experience of our law enforcement partners, the Department's criminal and national security divisions, and the United State's Attorney community to defeat and hold accountable those who would imperil the safety and security of our citizens through

cybercrime. I will also do everything I can to ensure that we are safeguarding the most vulnerable among us.

During my tenure as U.S. Attorney, the Eastern District of New York has led the prosecution against financial fraudsters who have callously targeted hard-working Americans—including the deaf and elderly—and stolen not just their trust, but their hard-earned savings. We have taken action against abusers in over 100 child exploitation and child pornography cases and we have prosecuted brutal international human trafficking rings that have sold—sold victims as young as 14 and 15 into sexual slavery.

If confirmed as Attorney General, I will continue to build upon the Department's record of vigorously prosecuting those who prey on those most in need of our protection, and I will continue to provide strong and effective assistance to survivors, who we must both support and empower.

Senators, throughout my career as a prosecutor, it has been my signal honor to work hand-in-hand with dedicated law enforcement officers and agents who risk their lives every day in the protection of the communities we all serve. I have served with them. I have learned from them. I am a better prosecutor because of them.

Few things have pained me more than the recent reports of tension and division between law enforcement and the communities we serve.

If confirmed as Attorney General, one of my key priorities would be to work to strengthen the vital relationships between our courageous law enforcement personnel and all of the communities we serve.

In my career, I have seen this relationship flourish.

I have seen law enforcement forge unbreakable bonds with community residents and I have seen violence-ravaged communities come together to honor officers who have risked all to protect them. And as Attorney General, I will draw all voices into this important discussion.

In that same spirit, I look forward to fostering a new and improved relationship with this Committee, the United States Senate, and the entire United States Congress—a relationship based on mutual respect and constitutional balance. Ultimately, I know we all share the same goal and commitment to protect and to serve the American people.

Now, I recognize that we face many challenges in the years ahead, but I have seen in my own life and in my own family how dedicated men and women can answer the call to achieve great things for themselves, for their country, and for generations to come.

My father, that young minister who carried me on his shoulders, has answered that call, as has my mother, that courageous young teacher who refused to let Jim Crow define her. Standing with them are my uncles and cousins who served in Vietnam, one of whom is here to support me today, and my older brother, a Navy SEAL, all of whom answered that call with their service to our country.

Senators, as I come before you today in this historic chamber, I still stand on my father's shoulders, as well as on the shoulders of all of those who have gone before me and who dreamed of making

the promise of America a reality for all, and worked to achieve that goal.

I believe in the promise of America, because I have lived the promise of America. And if confirmed to be Attorney General of the United States, I pledge to all of you and the American people that I will fulfill my responsibilities with integrity and independence. I will never forget that I serve the American people from all walks of life who continue to make our Nation great, as well as the legacy of all of those whose sacrifices have made us free.

And I will always strive to uphold the trust that has been placed in me to protect and defend our Constitution, to safeguard our people, and to stand as the leader and public servant that they deserve.

Thank you all once again for your time and your consideration. I greatly appreciate this opportunity to speak with you today. I look forward to your questions and to all that we may accomplish in the days ahead together in the spirit of cooperation, shared responsibility and justice.

Thank you for your time today.

Chairman GRASSLEY. And thank you, Ms. Lynch, for that statement.

Before my 10 minutes starts for the first round, I would like to talk to my colleagues just a minute, because of the 18 votes that are coming up this afternoon and because of the chaotic situation, and the more important thing is getting this hearing over in one sitting—in one day, even if it goes into the evening.

I hope my colleagues will be cognizant of what we normally do. Between Senator Leahy and I, we are fairly liberal on letting people go over, and whether we have five-, seven- or 10-minute rounds in any hearing, my practice is generally if you have got one second left, you can ask a question. But this time, I would prefer that you kind of stick to the 10 minutes. And I am not very good at gaveling people down, so take care of my timidity, will you please?

[Laughter.]

Chairman GRASSLEY. Now again, before the first 10 minutes starts, I would like to make something clear, just for myself—I cannot speak for my colleagues—and it takes on two things. One, what you said about you wanted to improve relationships with the Committee and with Congress. I—we welcome that very much, and that will be very, very helpful, particularly in regard to our responsibilities of oversight.

Secondly, taking off on something Senator Schumer said, and just speaking for myself, if I use this subject or that subject or another as a basis of maybe questioning what the President or an Attorney General's done, I want it clear that that is not the issue for me now. The issue is whether or not the Constitution or the laws have been violated or whether the Justice Department has acted in an appropriate way.

So now I would start with my questions.

On November the 20th last year, President Obama announced that he would defer deportation of millions of individuals in the country undocumented. Not only is this action contrary to our laws, it is a dangerous abuse of Executive authority.

If you are confirmed as the next Attorney General, before you take office, you will take an oath. You will raise your right hand and swear “to support and defend the Constitution of the United States and to bear true faith and allegiance to the same.” Your duty as Attorney General is not to defend the President and his policies; your duty is your oath, to defend the Constitution.

So my first question, with that oath in mind, I ask you, do you believe that the President has the legal authority to unilaterally defer deportations in a blanket manner for millions of individuals in the country illegally and grant them permits and other benefits, regardless of what the U.S. Constitution or—immigrations laws say?

Ms. LYNCH. Thank you for the question, Senator, and you raise a very important issue of how we manage the issue of undocumented immigrants here in our country, while still welcoming those who bring such great value to our shores, to our business community and to our culture.

Certainly I was not involved in the decisions that led to the Executive actions that you reference, and I am not aware of, at this point, how the Department of Homeland Security has set forth regulations to actually implement that, so I cannot comment on the particulars of what will happen.

I have had occasion to look at the Office of Legal Counsel opinion through which the Department of Homeland Security sought legal guidance there, as well as some of the letters from constitutional scholars who have looked at the similar issue. And certainly it seems to be a reasonable discussion of legal precedent, the relevant statute, congressional actions, along with the enforcement discretion of the agency, and I do not see any reason to doubt the reasonableness of those views.

I do think, however, that the ultimate responsibility of the Department of Justice is to always, when presented with issues by the White House or any agency, to review those issues carefully, to apply the relevant law and make a determination as to whether or not there is a legal framework that supports the requested action.

And I found it interesting, as I was reading the legal counsel opinion, that some of the proposals that were—that were set forth and asked about, the Office of Legal Counsel opined did not in fact have a legal framework, and I do not believe that those were actually implemented.

So I do think it is very important that as the Department of Justice, through any of its agencies, be it the Office of Legal Counsel or in a direct conversation with the President or any other member of the Cabinet, always ensure that they are operating from a position of whether or not there is a legal framework that supports the requested action. And the advice provided must be thorough, it must be objective, and it must be completely independent.

Chairman GRASSLEY. Let me take off on one word you used, “discretion,” and I presume that may have applied to prosecutorial discretion that was part of the President’s rationale.

If this is lawfully exercised on an individual basis, depending on the facts of a specific case, it is in fact case-by-case. So this is not so much a philosophical question as a practical thing.

What it does not allow anybody to do is tell whole categories of people that the law will not apply to them going forward. No one seriously disputes these broad principles; even the Office of Legal Counsel opinion on the President's Executive action accepts them.

So let me ask you this. What are the outer limits of the doctrine of prosecutorial discretion, and why don't the President's actions exceed those boundaries? When we are talking about millions of people, how does this action realistically allow for a case-by-case exercise of discretion?

Ms. LYNCH. Senator, as I reviewed the opinion and looked at the issues presented therein from the perspective of my career as a prosecutor and as a United States Attorney, and applying those principles of the exercise of discretion, I viewed it as a way in which the Department of Homeland Security was seeking legal guidance on the most effective way to prioritize the removal of large numbers of individuals, given that the resources would not permit removal of everyone who fell within the respective category.

And that certainly was the framework from which I viewed that. And looking at it from that perspective, the Department of Homeland Security's request and suggestion that they in fact prioritize the removal of the most dangerous of the undocumented immigrants among us—those who have criminal records, those who are involved in national security and terrorism, those who are involved in gang activity, violent crime, along with, I believe, people who have recently entered and could pose a threat to our system—seemed to be a reasonable way to marshal limited resources to deal with the problem.

As a prosecutor, however, I have had experience, obviously, in doing similar things and finding the best way to attack a serious problem with limited resources. But as a prosecutor, I always want the ability to still take some sort of action against those who may not be in my initial category as the most serious threat. And I did not see anything in the opinion that prevented action being taken against individuals who might otherwise qualify for the deferral.

Again, I am not aware of how the Department will actually go forward and implement by regulation this matter. I have not had the occasion to study that, and I do not know in fact if those are out.

Certainly, if I am confirmed as Attorney General, I look forward to learning more about that process and making sure that we are using all of our resources to protect the American people, particularly against the dangerous offenders who rightfully stand at the top of the removal list.

Chairman GRASSLEY. Yes. Well, I think you are telling me that you can do it for a few thousand or a few tens of thousands of people that maybe have committed a crime or something, but it seems to me to be—common sense would dictate that it is impossible to do prosecutorial discretion the way it has traditionally been done on an individual basis for the millions that are left over.

Let us move on. I would like to move away from the President's refusal to enforce the law and talk a little bit about this administration's failure to apply the law in an evenhanded way.

According to the—this goes to the IRS. According to the Treasury Department Inspector General—now, that is not me, the Inspector

General—the IRS used inappropriate criteria to deny tax-exempt status to predominantly conservative organizations, asked unnecessary questions and lastly, slowed approval of their application.

Initially, President Obama remarked that any IRS actions to target conservatives would be “outrageous.” Then last February the President said there was not “even a smidgeon of corruption” in what occurred at the IRS. “A smidgeon of corruption.”

Yet a few months later, in June, the director of the FBI, Director Comey, testified before the House Judiciary Committee that there was a “very active” ongoing criminal investigation into the matter. So this brings me to these questions.

I would like to know how to reconcile these two statements. If what the President said was accurate, then why in the world would the FBI be conducting an ongoing criminal investigation? A rhetorical question: Would the FBI investigation be just for show? I would like—I am going to take Director Comey at his word.

So if there is an ongoing criminal investigation at the FBI, then how could it be possible—be appropriate for the President to reach a conclusion about the facts before Director Comey?

Ms. LYNCH. Thank you, sir, and let me state at the outset that with regards to the actions of any of the agencies of our Government, there is certainly no place for bias or favoritism or anything other than the evenhanded application of the relevant laws and regulations. And certainly that has always been my goal as a prosecutor, and would be my continued goal should I be confirmed.

With respect to the IRS investigation, I am generally aware that there is an investigation going on, but it is not a matter that is either being conducted by my office or that I have been briefed on as United States Attorney. So I am not able to comment on the status now, except state that I do—

Chairman GRASSLEY. Based on what you just said, then, I can shorten this up by asking you this question. You have spent a career in law enforcement. When would it ever be appropriate for any President to know the results of a criminal investigation and then comment on it publicly while the investigation is still ongoing?

Ms. LYNCH. Senator, it—with respect to this investigation or any other, I am not aware of the context or the basis for the President’s remarks, so I am not able to determine whether or not they were in fact done after any evaluation of the investigation or whether they were a matter of opinion. So I am not able to comment on that specific remark.

Certainly, as part of the Department of Justice’s exercise of its powers, whether at the United States Attorney level or here in Washington, investigations are handled independently and without provision of materials or information about them—before their conclusion—to others in the executive branch or other agencies.

Chairman GRASSLEY. Senator Leahy. Thank you very much.

Senator LEAHY. Thank you, Mr. Chairman.

You know, I have been fortunate that my native State of Vermont has allowed me to serve here for four decades. I have listened in several different Committees I have been on to a lot of statements by nominees. I cannot think of one that is so moving as your statement, and I intend to make sure I have some copies for all members of my family and other friends.

You know, my years in law enforcement as State's Attorney in Vermont gave me a lot of respect for the difficult and dangerous work we ask police officers to do every day. I know the toll it can take, not only on the officers, but oftentimes on their families.

Ms. LYNCH. Yes.

Senator LEAHY. I have tried to support the work of law enforcement to keep our communities safe. They have to have the resources they need, whether it is bulletproof vests or funding for innovative criminal justice efforts.

I have also been deeply moved by the tragic events in Ferguson and New York. They have focused on what we know is a reality—strained relations between law enforcement and the communities they serve. I appreciate your reference to that in your statement. But you have worked very hard as a U.S. Attorney to bring both law enforcement and the communities together. Could you elaborate on that a little bit more?

Ms. LYNCH. Yes, thank you, Senator. I think you have raised one of the most important issues facing our country today, which is the need to resolve the tensions that appear to be discussed and appear to be rising between law enforcement and the communities that we serve. In my experience as a prosecutor and United States Attorney, these tensions are best dealt with by having discussions between all parties so that everyone feels that their voice has been heard.

With respect to our brave law enforcement officers, we ask so much of them. We ask them to keep us safe; we ask them to protect us, literally, from ourselves, and we ask them to do it often without the resources that they need to be safe and secure themselves. Yet they still stand up every day and risk their lives for us.

Many of our community residents, because of a host of factors, feel disconnected from government in general today, and when they interact with law enforcement, transfer that feeling to them as well, even if someone is there to help. What I have found most effective is getting people together and simply listening to their concerns, being open, helping them see that in fact we are all in this together and that the concerns of law enforcement, a safe society, a free society, are the exact same concerns of every resident of every community there.

Senator LEAHY. And would you agree that that is something that has to be considered by not only Federal law enforcement, but by State and local law enforcement, and that the Federal Government can help the State and local law enforcement in that respect?

Ms. LYNCH. Absolutely, Senator. One of the most important roles that the Department of Justice plays is not necessarily its most visible role, but it is the support that we provide to State and local law enforcement partners through our grant program and through our training program. We try our best to provide them with the resources that they need to carry out their jobs safely and effectively.

Senator LEAHY. You know, we all know that no prosecutor's office has the resources to prosecute every single crime before it, and you have to decide which ones have priority. Let me talk about one.

In State court, there is a case where a child rapist would receive two years. You obviously disagree with that.

You have brought Federal charges. And I think Bill O'Reilly on Fox called you a hero and said, "You should be respected by all Americans for standing up to gross injustice," and I agree. I agree with Bill O'Reilly on that.

More and more of the Justice Department's budget, as I said earlier, is going into our Federal prison system, so you have limited resources. How do you make these kind of judgments? How do you determine which cases are the important ones? A very difficult thing, realizing if you go after certain cases, it means you do not have the resources to go after others.

Ms. LYNCH. Certainly, Senator. One of the privileges of being the U.S. Attorney for the Eastern District of New York has been the ability to work with so many of my United States Attorney colleagues across the country.

All of us engage in this process every day, and we start with a full and frank evaluation, with our law enforcement partners, of the crime issues facing our particular districts. We try and determine what are the greatest threats to the people that we have sworn to serve.

And that is what I do in the Eastern District of New York every day. We then look at our resources and set priorities and goals to achieve the safest communities that we can.

But Senator, we do have to always, always maintain the flexibility to look at specific cases such as the Goodman case and determine if a Federal interest exists and if, in fact, a victim has not been protected and has not been heard, and use Federal resources there as well.

Senator LEAHY. Well, let me go into one that takes resources—we have had some people say to actually go get terrorists and lock them up in Guantanamo, even though we know what that has cost the American people, both in respect abroad and in dollars.

You have successfully prosecuted a number of terrorism cases in the Eastern District of New York, cases against individuals—plotting against John F. Kennedy Airport, the Federal Reserve Bank, and so on.

Just this month, you charged two Al-Qaeda members for attacking American troops in Afghanistan and Iraq. I was impressed, not only in your district, but in other parts of the country, where we have actually brought these terrorists to trial in our Federal courts. We have shown the rest of the world we can do it. There have been convictions, Osama bin Laden's son-in-law being one, and then they have been locked up.

Now, do you find the criminal justice system—I think I know your answer—an important terrorism tool?

Ms. LYNCH. Senator, it is certainly an important counterterrorism tool in the arsenal of tools that we have to deal with this ever-growing and ever-evolving threat. Let me say, at the outset, my view is that if terrorists threaten American citizens here or abroad, they will face American justice.

We work with our counterparts throughout the executive branch to determine, based on every case, the most appropriate venue for bringing terrorists to justice, as our primary goal is to incapacitate them and prevent further destruction.

Certainly within my own career as U.S. Attorney when cases—when the decision has been made that the case should be handled by a U.S. Attorney’s Office, we proceed in that fashion.

We also work closely, however, with the Office of Military Commissions and consult with them and share information to make those decisions as to what is in fact the best way to manage every case.

Senator LEAHY. I want to ask you a question I have asked each of the previous Attorney General nominees, and I say this because I think of the tremendous effort of the Senator from California, Senator Feinstein, who is sitting here—her tremendous efforts to confront acts of torture carried out in our country’s name.

Do you agree that waterboarding is torture and that it is illegal?

Ms. LYNCH. Waterboarding is torture, Senator.

Senator LEAHY. And thus illegal?

Ms. LYNCH. And thus illegal.

Senator LEAHY. Thank you.

And I know you are going to be asked a lot about immigration. Well, it makes me think we should be focusing on your qualifications for this job. Asking those questions might also speak to some of the qualifications of Congress.

We worked for months in this Committee, night and day, hundreds of hours, hearings, markups, debate, and we passed, by a strong bipartisan majority, an immigration bill that referenced so many of these things that we now hear discussed.

In my opinion, there were votes enough to pass it in the House of Representatives, but their leadership decided not to bring it up. I think that was a mistake. So now we deal with the question of Executive action.

You did not write the Executive action; you were not consulted about it, were you?

Ms. LYNCH. No, I was not aware of it until it was rendered.

Senator LEAHY. And would you say, if you have got millions of people in this country who may not be in a valid or legal status, it would perhaps strain our resources to think about how we would deport 10 to 12 million people?

Would that be a fair statement?

Ms. LYNCH. I believe that statement is fair, sir.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

Chairman GRASSLEY. Senator Hatch is the next one, but I wanted to inform all the Committee Members that since everybody on the Committee was here at the fall of the gavel, it will be done on a seniority basis, as opposed to first-come, first-served basis.

Senator Hatch is next.

Senator HATCH. Well, thank you, Mr. Chairman. I appreciate it.

Ms. Lynch, welcome to the Judiciary Committee.

Ms. LYNCH. Thank you.

Senator HATCH. I appreciate the service you have given in this country, and I am impressed with your qualifications, and I hope I can support your nomination.

It is important to hear what you understand your role and duty will be. Do you agree that when the constitutionality of a law is

challenged, the Attorney General has a duty to defend that law if reasonable arguments can be made?

Ms. LYNCH. Senator, I believe that one of the first and foremost duties of the Department of Justice is to defend the laws as passed by this body.

Senator HATCH. All right. Now, I would like you to answer these questions. I am trying to get through a number of them. I think you can answer most of them yes or no, if you can.

If you are confirmed, will you commit to enforce and defend the laws and the Constitution of the United States, regardless of your personal and philosophical views on—any matter?

Ms. LYNCH. Absolutely, sir.

Senator HATCH. Thank you. I am glad you said that.

Attorney General Holder answered that same question in the same way. The Justice Department had made reasonable arguments that the Defense of Marriage Act is constitutional, but then the Attorney General chose to stop making those arguments because of his personal views. And by breaking his promise, he cast doubt about others who make the same commitment as you did today.

Now, I do not doubt your sincerity. We have met together, and I have a high opinion of you. But is there any more assurance that you can give us on something like that?

Ms. LYNCH. Senator, it is my view that when it comes to the position of the Attorney General and the role of the Department of Justice in defending the statutes as passed by this Congress, the issue is not my personal view or any issue of bias or policy, even. But it is the duty and responsibility of the Department of Justice to defend those statutes.

Certainly, as we have seen, there may be rare instances where—and again, I was not involved in those—in that analysis, but there may be certain circumstances where careful legal analysis raises constitutional issues.

Senator HATCH. But they would be rare—

Ms. LYNCH. Those would be few and far between.

I also think that, should we reach that point, if there is a matter, it is a matter that I would prefer to have discussion about.

Senator HATCH. Okay. I appreciate that answer.

I am concerned that the administration has exceeded its lawful authority in several ways in an effort to avoid working with us up here in Congress. Now, I understand why they might not want to work with Congress from time to time, but, unfortunately, the Constitution requires us to work together, and that the Justice Department has actually facilitated this pattern of behavior, some people believe.

The Department has done so in a number of ways: in exceeding and even contravening lawful authority in the programs it helps administer, such as with the latest Executive actions on immigration; in purporting to provide legal justification for other agencies to ignore the law, as apparently occurred with the transfer of Taliban terrorists out of Guantanamo without notifying Congress, which is an obligation; and in taking some extreme litigation positions which, by my count, the Supreme Court has unanimously rebuked a record 20 times.

Now, given these disturbing patterns, how can you assure us that you will be independent, that you will say no to the White House or other executive branch agencies when they wish to act beyond the law as it is written?

Ms. LYNCH. Senator, I think one of the most important functions of the Department of Justice is to provide a legal framework, if it exists, when questions are raised.

Senator HATCH. Right.

Ms. LYNCH. But consistent with that, every good lawyer knows you must also provide the information that indicates that a legal framework may not exist for certain actions that someone may want to take. Every lawyer has to be independent, the Attorney General even more so, and I pledge to you that I take that independence very seriously.

Senator HATCH. Well, you did that in my office, and I appreciate that, because I think you will be a great Attorney General if you will do that.

Last August, you gave a speech in Switzerland in which you praised Attorney General Holder's initiative to limit mandatory minimum sentences only to some of the criminals who Congress said should receive them. But prosecutors, including even the Attorney General, do not have authority to decide that entire categories of defendants will not receive a sentence that the Congress has mandated. Is not that another example of using prosecutorial discretion to really, in effect, change the law without Congress?

Ms. LYNCH. Senator, with respect to the material that you are referring to, when I did give that speech, I was referring to the Department's "Smart on Crime" initiative, which seeks to manage another intractable problem of the large number of narcotics defendants and the limited resources that we have to handle those defendants and prosecute them.

Senator HATCH. And I want to help you with that. I want to help you with that.

Ms. LYNCH. Yes, and prosecute them effectively. In fact, in my own experience both as an Assistant United States Attorney and United States Attorney, we have had to deal with similar issues in the Eastern District of New York. We have had tremendous issues with narcotics importations over the years, and we have had to work out ways of resolving those cases. Many of them go to trial, but we also have had to prioritize the cases that we will seek mandatory minimums for and those which we seek guideline sentences for.

But, importantly, with respect to the Smart on Crime initiative, as pushed out and as has been implemented in the field, every prosecutor from the United States Attorney on down to line assistants are encouraged to still consider cases that might fall into a category where initially you would not seek a mandatory minimum but consider whether they would be appropriate. And those cases have occurred, and they will continue to occur.

Senator HATCH. Okay. I understand. As currently written, the Electronic Communications Privacy Act, or ECPA, requires only a subpoena for law enforcement to access email that has been opened, even though a search warrant would be required for a printout of the same communication sitting on a desk.

To make matters more complicated, ECPA is silent on the privacy standard for accessing data stored abroad. Without an actual legal framework in place, this puts the privacy of American citizens at risk for intrusion by foreign governments.

In the coming days, I intend to reintroduce the LEADS Act, which will promote international comity and law enforcement cooperation. Will you commit to working with me on this important subject? Because it is important we solve these problems.

Ms. LYNCH. Senator, the subject of electronic privacy is central to so many of our freedoms, and as you point out, in an era of ever-changing technology, we have to be vigilant to make sure that we are not only providing law enforcement the tools it needs but protecting our citizens' privacy. And I certainly commit to you to working with you on this important legislation and all the issues that will flow from it.

Senator HATCH. Well, thank you so much.

Trade secrets are among the most valuable assets for American companies and currently are protected under Federal criminal law by the Economic Espionage Act and by an array of State civil laws. Unlike other forms of intellectual property, however, there is no Federal civil remedy for trade secret owners. I will reintroduce the Defend Trade Secrets Act in the coming days with Senator Coons to provide an efficient Federal remedy for trade secret owners.

Do you agree that trade secret owners should have the same access to a Federal remedy as owners of other forms of intellectual property?

Ms. LYNCH. Senator, I think that the issue of trade secrets, again, particularly as American technology becomes ever more complex and becomes ever more a target from those both in the U.S. and without who would seek to steal it, is an increasingly important issue, and I look forward to working with you to consider that statute. I am not familiar with the provision that you raise, but it certainly touches on an important issue of making sure that our companies and their technology are protected.

Senator HATCH. Well, thank you so much.

I am today introducing legislation to help victims of child pornography receive the restitution that Congress has already said they deserve. The Supreme Court said last year that the current restitution statute, enacted more than 20 years ago, does not work for child pornography victims, and this legislation will change that. I am joined by more than 30 Senators on both sides of the aisle, including 4 on this Committee.

Do I have your commitment that, under your leadership, the Justice Department will aggressively prosecute child pornography and use tools like this legislation to help victims get the restitution they need to put their lives back together?

Ms. LYNCH. Senator, throughout my career, I have expressed a commitment to prosecuting those who would seek to harm our children, be it through child pornography or the actual abuse of children, which often go hand in hand.

You certainly raise important issues about how can we make these victims whole, and I look forward to working with you and the Members of this Committee in reviewing that legislation as well.

Senator HATCH. Thank you so much.

Now, I recently read a powerful book. I read it in one day. It is titled "License to Lie: Uncovering Corruption in the Department of Justice." The author writes about many things, including the debacle that occurred in the misguided prosecution of Senator Ted Stevens, which I thought was out of this world bad. I was one of the people who testified as to his character, and he was a person of great character.

As you know, he lost the Senate race because of this type of prosecution. I know that case. Ted Stevens was a dear friend of mine, and I testified on his behalf, as I said.

Only after he was convicted did we learn that the Justice Department prosecutors intentionally hid exculpatory evidence that could have helped his case.

Now, these were not mistakes. They were corrupt acts that violated every prosecutor's duty under the *Brady v. Maryland* decision to turn over exculpatory evidence so that the trial will be fair.

Now, I recommend that you read this book because, if even half of it is true—and I believe it is true—you have a lot of work to do to clean up that Department. Will you consider doing that for me?

Ms. LYNCH. Thank you, Senator. I will.

Senator Hatch. I appreciate it.

Thanks, Mr. Chairman.

Chairman GRASSLEY. Before I call on Senator Feinstein, I am going to ask, just as soon as the Finance Committee convenes, I am going to offer an amendment, so I would ask the most senior Republican to watch the time and call on the next person in seniority order.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Ms. Lynch, I sat through six opening statements by potential Attorneys General, and I just want to tell you yours was the best.

Ms. LYNCH. Thank you.

Senator FEINSTEIN. I see the combination of steel and velvet. I see your effectiveness before a jury. I see your love for the Constitution. And I see the determination which is in your heart and, I think, your being, and it is very, very impressive. So I want to thank you for really 30 years of service.

Ms. LYNCH. Thank you, Senator.

Senator FEINSTEIN. And I hope it will be a lot longer.

Mr. Chairman, I would like to place in the record Los Angeles Police Department Chief Charlie Beck's written testimony on the subject of the President's Executive action on immigration.

Chairman GRASSLEY. Without objection, so ordered.

Senator FEINSTEIN. Thank you very much.

[The information appears as a submission for the record.]

Senator FEINSTEIN. Ms. Lynch, I am going to ask you three questions. The first is on expiring provisions of the Foreign Intelligence Surveillance Act, which will come to this Committee before June of this year and also before the Intelligence Committee, on which I serve; a question about Office of Legal Counsel opinions; and a question on the State Secrets Act.

Let me begin with FISA. The three provisions that are going to expire on June 1 are, first, the roving wiretap authority. This pro-

vision enables the Government to maintain surveillance on a target when he or she switches phone numbers or email addresses without seeking a new court order.

The second is the lone wolf authority, which enables the Government to conduct surveillance of a non-United States person engaged in international terrorism without demonstrating that they are affiliated with a particular international terrorist group such as ISIS or Al-Qaeda.

And the third is the business records authority, which carries with it Section 215 of the National Security Administration. This enables the Government to obtain a court order directing the production of "any tangible thing" that is relevant to an authorized national security investigation.

Can you describe for us the importance of these three provisions and what would be the operational impact if the three were allowed to sunset in June?

Ms. LYNCH. Thank you, Senator. You certainly raise an important issue about the need to have a full panoply of investigative tools and techniques to deal with the ever-evolving threat that terrorism presents against us.

With respect to the provisions that you refer to, I think I have always found it most interesting that the roving wiretap provision is actually a provision that was incorporated into the FISA statute after being utilized extensively for several years in narcotics prosecutions. It was one with which I was familiar as a young prosecutor, as many of my colleagues across the country were as well. And the ability to describe to a court the nature of the offense, the nature of the activity, and the use of attempts to shield oneself from electronic surveillance, which is part of what must be set forth in the application, have been invaluable tools.

Of particular importance is the fact that all of this must go to a court. Obviously, in the narcotics area, it was an Article III Court; in the FISA area, it is to the FISA Court. But there is judicial review for this, and it has been an important part of the techniques we have used in the war on terror, as have the other two provisions that you mention.

I do think, however, that with respect to FISA, there is always the ability, there is always the need to make sure that we are current not just with technology, but with the most effective way to protect privacy as we go forward in this important act. I know that is something that you have spent a great deal of time on, as well as many of your colleagues on this Committee as well as on the Intelligence Committee. And I look forward to continuing those discussions with you, should I be confirmed.

With respect to the lone wolf provision, again, I think we have to obviously examine it carefully. Recent events, however, have underscored the importance of this as an issue in the war on terror, and so I would hope that we could move forward with any proposed changes to FISA with a full and complete understanding of the risks that we are still facing, and if any changes need to be made, again, after full and fair consideration with this Committee, with the Intelligence Committee, and the discussions that we need to have, making sure that we can still provide law enforcement with the tools that they need.

Similarly with Section 215, I believe that the court order provision in there is an effective check and certainly a necessary check as we gather data from all types of sources. As I have always said, I am certainly open to discussions about how they can be best modified, if we need to modify them, consistent with the goals of protecting the American people. And I commit to you, Senator, and indeed to all of this Committee, that I will always listen to all those concerns, be it about the FISA statute or any of the techniques we are using in the war on terror.

Senator FEINSTEIN. Thank you very much.

As a Member of both Judiciary and Intelligence, we have on both Committees sought access to Office of Legal Counsel opinions, called "OLC opinions," and these opinions often represent the best and most comprehensive expression of the legal basis for intelligence activities Congress is actually charged with overseeing. So without these opinions, you do not really know the legal basis upon which an administration has based certain activities, and it has been very frustrating to us.

In particular, executive branch officials have previously advised the Committee of the existence of a seminal OLC opinion written by Ted Olson decades ago governing the conduct of collection activities under Executive Order 12333.

My question is: Can we have your commitment that you will make a copy of this OLC opinion available to Members of both the Intelligence and the Judiciary Committees? Probably your first tough question.

[Laughter.]

Ms. LYNCH. Well, Senator, I think that with respect to the OLC opinions, you are correct; they do represent a discussion and an analysis of legal issues on a wide variety of subjects when a variety of agencies come to the Department for that independent advice that we must provide them. Certainly I am not aware of the discussions that have been had about this previous opinion in terms of providing it. Certainly I will commit to you to work with this Committee as well as the Intelligence Committee to find a way to provide the information that you need consistent with the Department's own law enforcement and investigative priorities.

Senator FEINSTEIN. Thank you very much. This particular opinion is important, and it would be useful if we can review it, so thank you.

On state secrets, on September 23, 2009, the Attorney General issued a memorandum establishing new procedures and standards to govern DOJ's defense of an assertion of the state secrets privilege in litigation. Among other things, the memorandum stated that the DOJ would provide the periodic reports to Congress on the exercise of the state secrets privilege.

Since 2009, only one such report, from April 2011, has been provided. That report discussed the two cases in which the privilege had been invoked under the new policy, but those are no longer the only two cases.

So I would like to ask you if you could provide the appropriate Oversight Committees with the second periodic report on the exercise of state secret privileges that discusses those cases which the privilege has been invoked on since April of 2011?

Ms. LYNCH. Senator, you raise the important issue of the need to work with the Oversight Committees, be they this Committee or Intelligence, in reviewing the actions of the Department of Justice, not just so the Committees can carry out their work, but so that the American people can be aware of how the Department carries out its work.

I am not familiar with the reports that you referred to at this point. I certainly look forward to reviewing this issue, and I certainly commit to you that I will do my best to ensure that the Department lives up to its obligations that it has set forth.

Senator FEINSTEIN. Good. And I will come back. This is an important question to us, so I will come back and hopefully can get an answer, “yes” or “no,” within the next couple of weeks. So thank you very much.

Ms. LYNCH. Senator, I look forward to learning more about the issue, and I look forward to sharing that with you, should I be confirmed, as well as any issues of concern that this Committee or others have.

Senator FEINSTEIN. Thank you very much.

Thank you, Mr. Chairman.

Chairman GRASSLEY. Thank you, Senator Feinstein.

Now, it is Senator Sessions’ turn.

Senator SESSIONS. Thank you, Mr. Chairman.

It is great to have you here. I appreciated the opportunity to have a good discussion, I think, in our office, and having had—I think I just passed my time in the Senate longer than I spent in the Department of Justice. It was a great honor to serve that, and I have high ideals for this Department. And we understand that the Attorney General is the premier law enforcement officer, the senior law enforcement officer in America. He or she sets the tone for law in America, the commitment to law, and must resist politicizing law and do the right thing on a daily basis.

On occasion, you are called upon to issue opinions.

OLC works for you, the Office of Legal Counsel who issues these opinions. And you will have to tell the President “yes” or “no” on something that he may want to do.

Are you able and willing to tell the President of the United States “no” if he asks permission or a legal opinion that supports an action you believe is wrong?

Ms. LYNCH. Senator, I believe you have touched upon one of the most important responsibilities of the Attorney General, and let me say also that I appreciated very much the opportunity to meet with you and discuss these important issues.

The Attorney General’s position as a Cabinet member is perhaps unique from all other Cabinet members. Yes, a member of the President’s Cabinet, but the Attorney General has a unique responsibility to provide independent and objective advice to the President or any agency when it is sought, and sometimes perhaps even when it is not sought.

With respect to the Office of Legal Counsel—

Senator SESSIONS. And so you understand that your role is such that on occasion you have to say “no” to the person who actually appointed you to the job and who you support?

Ms. LYNCH. Senator, I do understand that that is, in fact, the role and the responsibility of the Attorney General and, in fact, a necessary obligation on their part.

Senator SESSIONS. Well, you know, people have agendas, and Attorneys General sometimes do, and they have to guard against that and be objective, as you basically said to me, now in Committee.

On April 24th of 2013, Attorney General Holder said this—and I am raising this fundamentally because I think there is a lot of confusion about how we should think about immigration in America, what our duties and what our responsibilities are. He said this: “Creating a pathway to earned citizenship for the 11 million unauthorized immigrants in our country is essential. The way we treat our friends and neighbors who are undocumented—by creating a mechanism for them to earn citizenship and move out of the shadows—transcends the issue of immigration status. This is a matter of civil and human rights.”

So let me ask you, do you believe that a person who enters the country unlawfully, that has perhaps used false documents or otherwise entered here, has a civil right to citizenship?

Ms. LYNCH. Well, Senator, I am not familiar with the context of those comments. I certainly think that you do touch upon the difficult issue of how do we handle the undocumented immigrants who come to our country, I believe, for the life that we offer, I believe, because of the values that we espouse.

Senator SESSIONS. Well, I do not want to interrupt you, but just the question is: Do you agree with that statement that it is a matter of civil rights and citizenship and work authority, a right to work in America, for someone who enters the country unlawfully, that is a civil right?

Ms. LYNCH. Senator, I have not studied the issue enough to come to a legal conclusion on that. I certainly think that people who come to this country in a variety of ways can rehabilitate themselves and apply, but that would have to be something that would be decided on a case-by-case basis.

Senator SESSIONS. Well, I would just like to hear you answer that. Is it a civil right for a person who enters the country unlawfully, who would like to work and like to be a citizen, to demand that contrary to the laws of the United States, and when Congress does not pass it, is that a right that they are entitled to demand?

Ms. LYNCH. Sir, I do not think that—I think that citizenship is a privilege. Certainly it is a right for those of us born here. I think it is a privilege that has to be earned. And within the panoply of civil rights that are recognized by our jurisprudence now, I do not see one such as that you are describing.

Senator SESSIONS. I certainly agree. I am a little surprised it took you that long, but the Attorney General’s statement was breathtaking to me.

Now, Peter Kirsanow, who is a member of the U.S. Commission on Civil Rights, responded to that some time ago, and here is what he said: “To equate amnesty for breaking the Nation’s immigration laws with civil rights betrays an incoherent and ahistorical understanding of the civil rights movement. Law-abiding Black citizens of the United States were not seeking exemption; they were seek-

ing application of such laws in the same manner that was applied to Whites.”

Would you agree with Mr. Kirsanow’s analysis?

Ms. LYNCH. Well, certainly I think with respect to the civil rights movement and the role of African Americans in it, it certainly was a movement designed to assure equal access to law and equal application of law.

Senator SESSIONS. Well, on the 50th anniversary of the Selma march that is approaching—people were denied systematically fundamental rights as citizens of the United States of America. And that was a historic event. It changed America, and I think it is important that that be remembered. But I will just tell you, it is quite different, as I think Mr. Kirsanow points out, to demand your lawful rights as an American and to ask for—insist that civil rights apply to those who enter the country unlawfully to have these benefits.

Well, the President’s action would give people who came here unlawfully the right to work, the right to participate in Social Security and Medicare, when Congress has not done that; allows them to stay, for at least a period, lawfully.

Let me ask you this: In the workplace of America today—when we have a high number of unemployed, we have had declining wages for many years, we have the lowest percentage of Americans working—who has more right to a job in this country: a lawful immigrant who is here, a green-card holder, or a citizen, or a person who entered the country unlawfully?

Ms. LYNCH. Well, Senator, I believe that the right and the obligation to work is one that is shared by everyone in this country, regardless of how they came here. And certainly if someone is here, regardless of status, I would prefer that they be participating in the workplace than not participating in the workplace.

With respect to—

Senator SESSIONS. Well, that was—so you think that a person that is—anybody that is here, lawfully or unlawfully, is entitled to work in America?

Ms. LYNCH. Well, Senator, I am not sure if I know—if I understand the basis for your question as to whether or not there is a legal basis for them to work or not.

Senator SESSIONS. I asked you who had—we were talking about rights. Who has the most rights? Does a lawful American immigrant or citizen have the right to have the laws of the United States enforced so that they might be able to work? Or does a person who came here unlawfully have a right to demand a job?

Ms. LYNCH. Certainly the benefits of citizenship confer greater rights on those of us who are citizens than those who are not.

Senator SESSIONS. Well, do you think a person that is here unlawfully is entitled to work in the United States when the law says that employers cannot hire somebody unlawfully in America—

Ms. LYNCH. I believe that—go ahead.

Senator SESSIONS. Go ahead.

Ms. LYNCH. Sorry, sir. I think that certainly the provision that you refer to regarding the role of the employer in ensuring the legal status of those who are here is an important one and that we have to look at it in conjunction with this issue in terms of pre-

venting undocumented workers who, as you have indicated before, are seeking employment. Again, we want everyone to seek employment, but we have in place at this point in time a legal framework that requests or requires employers to both provide information about citizenship as well as not hire individuals without citizenship.

Senator SESSIONS. Do you think that someone given—I understand that you support the Executive order and OLC's opinion; is that correct?

Ms. LYNCH. I do not believe my role at this point is to support or not support it. My review of it was to see whether or not it did outline a legal framework for some of the actions that were requested. And as noted, it indicated that there was not a legal framework for other actions that were requested.

Senator SESSIONS. Well, let me wrap up by asking this: If a person comes here and is given a lawful right under the President's Executive amnesty, they have a Social Security and a work authorization card, what if somebody prefers to hire an American citizen first, would you take action against them? Do you understand this to mean that those who are given Executive amnesty are entitled as much as anybody else in America to compete for a job in America?

Ms. LYNCH. Well, I do not believe that it would give anyone any greater access to the workforce and certainly an employer would be looking at the issues of citizenship in making those determinations.

Senator SESSIONS. Would you take action against an employer who says no, I prefer to hire somebody that came to the country lawfully, rather than someone given Executive amnesty by the President? Would Department of Justice take action against them?

Chairman GRASSLEY. When you answer that I will move on then.

Ms. LYNCH. Thank you, sir.

With respect to the provision about temporary deferral, I did not read it as providing a legal amnesty. That is not permanent status there, but a temporary deferral. With respect to whether or not those individuals would be able to seek redress for employment discrimination if that is the purpose of your question, again, I have not studied that legal issue. I certainly think you raise an important point and would look forward to discussing it with you and using and relying upon your thoughts and experience as we consider that point.

Chairman GRASSLEY. Thank you, Senator Sessions.

Now Senator Schumer.

Senator SCHUMER. Well, thank you and you know, I think that even in the short while here, it is clear to my colleagues why you are such a tremendous—why you have been such a tremendous U.S. Attorney in my home State of New York and home borough of Brooklyn, and why you would make such a great Attorney General. You are just knocking them out of the park.

And speaking of sports analogies, there is another point I would like my colleagues to know, another testament to your perseverance, to your loyalty in the face of incredible adversity. With all due respect to Mr. Tillis, you are not a Tar Heel or a Blue Devil, you are a Knicks fan. And that takes—it is a lot tougher being a Knicks fan than going through these questions here today.

But, anyway, I would like to just go over a couple of points some of my colleagues made. First on prosecutorial discretion, there is a myth out there that prosecutorial discretion policies are tantamount to an illegal failure to enforce the law. And we know that you have enforced the law aggressively and will continue to do so, as has the administration.

Some of my friends across the aisle seem to be suggesting that the President's announcement of the enforcement policies for the Department of Homeland Security is tantamount to an announcement that we will not enforce our immigration laws, but that is absurd.

We know we have 11 million undocumented immigrants living in the United States. Congress, this body, only allocates enough money for DHS to deport 400,000 of them; 11 million illegal immigrants, enough money to deport 400,000. Obviously you have to make some choices here. And I am sure when my dear friend Jeff Sessions, and he is a dear friend, was U.S. Attorney in Alabama, he used prosecutorial discretion. I know he did a good job going after violent drug dealers and criminals.

We want our prosecutors to go after the highest level crimes if they do not have the resources to do all of them. Doesn't it make sense to have a general rule to prosecute in a prosecutorial office with limited resources to go after bank robbers before you go after shoplifters?

Now, obviously there can be an occasional exception. As you mentioned, the President's Executive order allows for that occasional exception. But this idea that going after—having an office go after the higher-level, more dangerous crimes first is part of how law enforcement has gone on for hundreds of years, and it should. So I do not even get this idea that this is an illegal act by the President.

We arm our law enforcement officials with an array of laws, but limited resources. They have to make hard choices. And a straightforward allocation of resources is not political activism, it is what prosecutors are doing in every jurisdiction of this land right now.

Immigration is like any other issue. We have limited resources. It makes eminent sense to go after the hardened criminals before going after lower-level offenders. So just let me ask you a couple of questions here.

Don't U.S. Attorney's Offices all over the country consistently have to make these general type of prosecutorial decisions on a day-to-day basis? And how do you?

Ms. LYNCH. Yes, Senator. With respect to the exercise of discretion and the setting of priorities, one of the privileges that I have had of being the U.S. Attorney in the Eastern District of New York and working with my colleagues across the country has been getting to know them and learning about how different every district is. How a crime problem in Brooklyn may not even appear on the West Coast. And how a crime problem in the Midwest that has seen an increase in crime due to the happy accident of increased oil reserves may present issues that I would never face in an urban environment.

My colleagues and I work together and we share our thoughts on the best ways to deploy our limited resources to deal with the crime problems in our districts. My colleagues that have a large

number of Native American reservations in their districts, for example, have a very different base of problems than I do. But they are just as committed and just as focused on keeping those citizens safe as well.

So all of us look at the crime problems in our districts. To do that, we work very closely with our law enforcement partners in looking at how they have determined the nature of the threat, be it terrorism, be it narcotics, be it those who would target children.

We also work closely with our State and local counterparts, not just the law enforcement counterparts, but our prosecutive counterparts in the District Attorney's Offices.

Many times I will have a matter in my office that is subject to both Federal and State jurisdiction and it may be more appropriate for the District Attorney to prosecute that type of crime because of the nature of the sentence that can be achieved, because of the impact on a particular victim or community, or because of the legal issue involving proof and the admissibility thereof. All of these things go into the consideration of how we manage individual cases but also how we set priorities and then deploy our limited resources to best protect the people of our district.

Senator SCHUMER. Exactly. Every prosecutor, whether it is the Justice Department, the U.S. Attorney's Office, sets priorities and has to, and that is just what the President did in my opinion in the Executive order.

The next one, we are hearing a lot about Executive action being unconstitutional. And so I would like to just talk about that. That is another myth that is out there. No Federal court has struck down Executive action. The most recent Federal court to hand down a decision supported it. I have heard it suggested Federal courts have declared Executive action unconstitutional. It so happens, in fact, dating back to Chief Justice Rehnquist, the Supreme Court has repeatedly bolstered Executive discretion and refused to review agency decisions that are within the law.

With respect to this Executive action there have been two Federal cases filed—one here in Washington by Sheriff Arpaio, notoriously anti-immigration activist, that has been dismissed. The second suit was filed in Texas and is still pending. So no courts have struck down Executive action.

Now we are hearing that Speaker Boehner and House Republicans will be suing the President on this Executive action. I do not think that is a responsible use of taxpayer dollars, but at least Speaker Boehner and I agree on one thing: if Republicans disagree with President Obama over the legality of this policy, they can sue him and let the courts decide. The confirmation of America's highest law enforcement officer is not the time or place to vent frustration.

So let me just ask you a couple of questions. You have answered them, but I want to underscore them. Because some people are concerned that the, "rogue Obama administration" is lawless. Will you commit to following court decisions and legal process?

Ms. LYNCH. Absolutely, Senator, that is my first point of reference.

Senator SCHUMER. And specifically if a court happens to strike down Executive action, will you respect that court decision?

Ms. LYNCH. I will respect that court decision.

Senator SCHUMER. And let us imagine Congress—I do not think this will happen—I would try to prevent it as best I could, but let us say Congress were to pass a bill explicitly prohibiting President Obama’s immigration actions, a bill I find hard to imagine the President would sign, but let us just imagine for the sake of argument happened.

If such a bill passed, will you commit to following the new law?

Ms. LYNCH. I will commit to following all the laws duly executed by this body.

Senator SCHUMER. Thank you. Okay. Just one other issue since I have a little more time. Work permits, which my good friend, again, Jeff, brought—Senator Sessions brought up. Some have suggested it is illegal for the administration to issue work permits for recipients of deferred action. Again, they imply this is unprecedented. That is misleading. Guess who did it in 1982? Ronald Reagan. They published INS regulations authorizing work permits for recipients of deferred action—1982, the Reagan administration. That is not to say workplace enforcement is not necessary. It is. And in fact, isn’t it true, Ms. Lynch, that you have a strong record of enforcing workplace immigration rules?

Just tell us a little about the 7-Eleven stores case that you brought on Long Island?

Ms. LYNCH. Thank you, Senator. The case against the 7-Eleven stores and various franchises was a very important one to my office because it was one in which we saw a corporate entity deliberately flouting the labor laws. Individuals mostly of a particular ethnic group who owned franchises of 7-Eleven were reaching out to their own community members and hiring them to work in the stores. This would have been an opportunity for individuals to earn money for their families and to essentially become part of the American Dream.

Instead, however, the workers were systematically victimized. They were forced to work double shifts, triple shifts, yet only paid for working part-time hours. They were only given their money in either a 7-Eleven debit card, or cash as deemed appropriate by the manager.

Even worse than this was the evidence that we uncovered that the stores were aware that they were violating the labor laws and simply flouting them.

They also requested—they also required the workers to all live together in company-sanctioned housing. We essentially were creating a modern-day plantation system on Long Island and also throughout the Virginia area with co-conspirators of these franchise owners.

We spent a long time working on the investigation in conjunction with our law enforcement partners. The matter is still being reviewed with respect to other States. And wherever we find workers being victimized and being discriminated against, certainly my office has never hesitated to take action.

Senator SCHUMER. Thank you, my time has expired, Mr. Chairman.

Senator SESSIONS [presiding]. Thank you. I would offer for the record a consent that the article from the Atlantic saying—headline

by David Frum, "Reagan and Bush Offer No Precedent for Obama's Amnesty Order." And I think that is crystal clear.

[The article appears as a submission for the record.]

Senator SESSIONS. Senator Cornyn, "Justice" Cornyn is next.

Senator CORNYN. Good morning, Ms. Lynch.

Ms. LYNCH. Good morning.

Senator CORNYN. Congratulations, again, to you on your nomination and thank you for coming to my office last—I guess it was last Friday—

Ms. LYNCH. Yes.

Senator CORNYN [continuing]. To visit about this hearing. And I should say congratulations to you for an outstanding career as a United States Attorney. The challenge, I think, that people have when they come to Washington, DC, and they assume jobs that have political implications is that they sort of forget their basic mooring in the law and they become politicians, masquerading as law enforcement officers, and that is a real challenge. And I will not claim that it is only a challenge for Democrats, it has been a challenge for Republicans as well.

But I am concerned—well, let me for Senator Schumer's benefit, let me just stipulate, you are not Eric Holder, are you?

Ms. LYNCH. No, I am not, sir.

Senator CORNYN. So no one is suggesting that you are, but, of course, Attorney General Holder's record is heavy on our minds now and I agree with the Chairman about his concerns when the Attorney General refers to himself as the President's wingman, suggesting that he is not—does not exercise independent legal judgment as the chief law enforcement officer for the country.

You wouldn't consider yourself to be a political arm of the White House as Attorney General, would you?

Ms. LYNCH. No, Senator, that would be a totally inappropriate view of the position of Attorney General.

Senator CORNYN. And you would be willing to tell your friends "no" if in your judgment the law required that?

Ms. LYNCH. Sir, I think that I have to be willing to tell not just my friends and acquaintances, but colleagues, "no" if the law requires it.

Senator CORNYN. And that would include the President of the United States?

Ms. LYNCH. I think that the obligation of the Attorney General is to, when presented with matters by the President to provide a full, thorough, independent, substantive legal analysis and give the President the best independent judgment that there is. And that may be a judgment that says that there is a legal framework for certain actions and it may be a judgment that says that there is not a legal framework for certain actions.

Senator CORNYN. And while we have stipulated you are not Eric Holder, Mr. Holder's record is certainly on our minds, because I cannot think of an Attorney General who so misevaluated the independent role of the chief law enforcement officer and taken on that aspect of the President's wingman and operated as a politician using the awesome power conferred by our laws on the Attorney General.

The Attorney General has been openly contemptuous of the oversight responsibilities of a co-equal branch of Government. He's stonewalled legitimate investigations by the Congress including the investigation into the Fast and Furious episode that Senator Grassley referred to earlier, making bogus claims of executive privilege in order to keep Congress and the American people from finding out the facts.

We know that the Attorney General has repeatedly made legal arguments that have been rejected as unconstitutional by the United States Supreme Court, and he's harassed States like mine, and I suspect you will hear from another colleague about his State on matters like voter ID when the United States Supreme Court has upheld the validity of voter ID as a means to protect the integrity of the ballot for people who are qualified to vote. And at the same time, the Attorney General has failed to implement laws that Congress has passed in order to provide—to protect the voting rights of our military deployed overseas.

He's also politicized the war on terror. He's declassified top secret legal memos exposing public officials in the intelligence community to not only ridicule, but threats, legal and otherwise, for performing actions that they were told by the highest legal authorities were legal and were necessary to save American lives. And, indeed, he reopened a criminal investigation into those same members of the intelligence community after a previous investigation had not revealed any basis for criminal charges.

So how do we know you are not going to perform your duties of office as Attorney General the way Eric Holder has performed his duties? How are you going to be different?

Ms. LYNCH. Senator, if confirmed as Attorney General, I will be myself. I will be Loretta Lynch. And I would refer you to my record as United States Attorney on two occasions, as well as a practicing lawyer, to see the independence that I have always brought to every particular matter.

I certainly think that going forward, while I am not familiar with the particulars of the issues that you raise, they clearly are of concern to you and perhaps to this Committee. And I do pledge to this Committee that I want to hear your concerns. I want to listen to your concerns, and I will always be open to discussing those issues with you.

Senator, I am sure that as we go forward, should I be confirmed, while it would be wonderful to think that you would agree with everything that I would do, that may not be the case.

Senator CORNYN. You may not agree with everything we do.

Ms. LYNCH. And that is perfectly appropriate. But, Senator, I will always be open to discussing with you why I have done something and the basis for which I have made an action, to the extent that I am able to do so. I have found that to be the most effective way of not just for me in terms of learning from people with whom I disagree, but also working effectively with people with whom I may disagree on various points, but with whom, like you, we share a common goal.

Senator CORNYN. Ms. Lynch, I have been married 35 years and I can guarantee you that 100 percent agreement is an impossible

standard for anybody to comply with. So we do not expect that, obviously.

But I want to ask you about your commitment to working with the Committee and Congress and respecting our congressional oversight authority. A recent letter sent to Senator Leahy on behalf of Attorney General Holder was dated December the 5th, 2014, and it responds to questions for the record that arose in an appearance before this Committee on March the 6th, 2013. So obviously about, this looks roughly a year and a half, more than a year and a half later. Can we expect a more timely response from you and the Department of Justice to the legitimate inquiries of this Committee?

Ms. LYNCH. Certainly, Senator. I believe that the oversight responsibility of this Committee is important, not just for the functioning of the Committee, but also to the American people in terms of helping them understand the way in which the Department operates and the way in which we all work to keep them safe.

I commit to you absolutely that I will work with this Committee to ensure that we provide as timely a response as possible. I am not sure of the particulars of the matter that you raise, so I am not able to comment on that. But certainly I would hope to be able to provide you with the information that you need in as timely a manner as consistent with the Department's litigation and enforcement responsibilities.

Senator CORNYN. I think it would make it possible for you to be a more effective Attorney General and it would make it possible for us to be more effective in our respective roles as Members of Congress exercising our responsibilities as well.

I want to just ask you a little bit about prosecutorial discretion which you have heard something about here. My only regret from this morning's hearing is that the—and Senator Schumer, the senior Senator from New York who introduced you, was not available for cross-examination by Members of the Committee. But we will have a chance to talk later. But he seemed somewhat dismissive of concerns about this massive—what I would consider, in essence, refusal to enforce existing law that is involved in these Executive actions.

There is a difference to your mind, isn't there, between a case-by-case exercise of prosecutorial discretion and a refusal to enforce the laws that are on the books? There is a difference, isn't there?

Ms. LYNCH. Senator, there is a difference. And I do not view the Department of Justice, certainly in my own practice, as refusing to enforce law, but rather attempting to set priorities and then exercising discretion within those priorities.

Senator CORNYN. Well, let me ask you about that. Isn't it incumbent upon the Department of Justice to ask Congress for the resources to do the job that Congress has said the Department must perform before you can come back and say, well, we are just not going to pursue those crimes and those offenses because we do not have enough money. I mean, isn't it your responsibility—will it be your responsibility as the next Attorney General to come to us and ask us for those resources?

I cannot imagine if Attorney General Holder or the President of the United States or Secretary Johnson, or others, had come to us and said, we do not have the resources to enforce the immigration

laws, so we are going to have to, in essence, decline to enforce them because we do not have those. I mean, don't you have that responsibility to ask for those resources before you decline to enforce the law based on lack of resources?

Ms. LYNCH. Certainly, Senator, I am not aware of the Department of Homeland Security's budget requests before this body or Congress in general. With respect to the Department of Justice, I had been involved in reviewing the budget as part of my work on the Attorney General's Advisory Committee, and certainly during sequestration spent a great deal of time looking at the budget to ensure that we did maintain the appropriate resources to carry out our core mission of protecting the American people within the constraints that were placed upon us at that time. And it is my understanding that, with respect to budget requests that the Department of Justice makes, that those requests do include information about goals and priorities across the board as a way of explaining to Congress why specific resources are needed.

Senator CORNYN. So you do need more money?

Ms. LYNCH. I would probably join all of my agencies in saying that, sir, but I cannot speak for them. Senator Cornyn. That is what I thought. Thank you.

Chairman GRASSLEY. Thank you, Senator.

Now Senator Durbin and the next Republican will be Senator Lindsey Graham.

Senator DURBIN. Ms. Lynch, thank you for being here. I will be objective, although I am deferential to women named Loretta. I have been married to one for 47 years. And I am glad that you are here today.

When your father lifted you up on his shoulders, at that Greensboro church, you were a young girl at the time, but a witness to a moment in history that changed America forever and literally changed your life. There was no way you could know that.

One of the central issues that was raised during the civil rights movement was the right to vote. A right of which Chief Justice Roberts said, sitting in that very same place, and quoting a Court decision, "it's preservative of all rights." We are now in a unique position, some 50 years later, about to celebrate the 50th anniversary of the Voting Rights Act. The Supreme Court in *Shelby County v. Holder* struck down major provisions of the Voting Rights Act, and Congress, which historically had renewed the Voting Rights Act on a bipartisan basis, is now, with few rare exceptions, split along partisan lines as to whether or not there will be a renewal of some sections.

We are finding States across the Nation, many States, that are changing the requirements for voting. I chaired the Constitution Subcommittee of Judiciary. I took the Subcommittee to public hearings in Ohio and Florida where there were new restrictions placed on voting by State legislatures. I called the election officials of both political parties in those States and asked them if there was any evidence of voter fraud or voter abuse that led to these legislative changes and to a person they said virtually none.

What has happened is that the Department of Justice has stepped in—in some cases that they considered to be extreme and

unfair—and worked to stop the implementation of the State laws that restricted the right to vote.

As you embark on the possibility of making that decision as Attorney General, how do you view the State voting rights in America today and what do you view is your responsibility should you be our next Attorney General?

Ms. LYNCH. Thank you, Senator. Certainly I believe that the right to vote is the cornerstone of a free democracy and one that every citizen has the right and, in fact some would argue, the obligation to exercise.

With respect to how voting rights are being handled in the country now, I think we are in a time of great debate over these issues. Those are important issues and I am certainly open to hearing all sides of it.

With respect to how—and I also think that every State does have the responsibility and obligation to regulate the voter rolls and to ensure that the vote is carried out freely and openly and fairly.

And I do believe that that is the goal of many of our elected officials, if not most of our elected officials, who deal with these issues every day.

The concerns that are raised, Senator, are when acts that are taken with a goal towards protecting and preserving the integrity of the vote act in a different way and act to suppress the vote or in some way prevent people from exercising the franchise.

I would hope that at the first outset, through the political discourse and discussion, that we could have a conversation about that and come to a resolution of practices and procedures that would ensure the right to vote for all citizens while still protecting the integrity of everyone's ballot.

Absent that, I believe that when laws are passed, the Department of Justice has to look very carefully at their impact in making a decision as to how to proceed. Certainly there have been instances when voter ID laws have received approval from the Department under what was previously known as preclearance because they sought to simply regulate and protect the ballot as opposed to act in a different way.

But where there is an indication that the vote will somehow be harmed, I believe the Department of Justice certainly has the obligation to review that matter, to look carefully at all of the facts in evidence, and then proceed accordingly.

Senator DURBIN. I could not agree with you more, and I find it ironic and painful that at this moment in our history, as we celebrate with the movie "Selma" and talk about the 50-year anniversary of the Voting Rights Act, that States, many States, on a systematic basis are making it more difficult for Americans to vote, without any evidence of voter fraud to back up those changes. In one Southern State, it is estimated that some 600,000 voters were basically precluded from voting in an election because of new voter ID requirements. In that same State, a 93-year-old veteran was turned away, a 70-year-old doctor turned away, people who were proud to vote, wanted to vote, turned away by new laws. These were people who had a right to vote, and it troubles me that, amidst all the celebration of the civil rights movement, we are find-

ing a reversal of the most fundamental principle in preserving that right to vote.

I appreciate what you had to say about it.

I would say a word about the Smarter Sentencing Act, which I introduced with Senator Lee from Utah, who may be still here today, a bipartisan measure with 32 cosponsors, in an effort to take a look at the reality that not only does the United States have more prisoners per capita than any other nation, but in many instances, lengthy prison sentences do not serve the cause of justice and deny us resources we need to keep our communities safe.

Attorney General Holder, who is not held in the highest regard by some Members of this Committee, has been an outspoken supporter of this bipartisan measure, and I hope that you would consider supporting it, too, although I will not put you on the spot to do that without giving you a chance to look at it.

Let me add one other element. As Chairman of the Constitution and Human Rights and Civil Rights Committee, which was its name before this new Congress, we also had a hearing on solitary confinement. It turns out the United States in its prison system has more prisoners in solitary confinement than any other nation. And we had testimony from those who had spent 10 years on death row in solitary confinement in Texas, an even longer period of time in solitary confinement on death row in the State of Louisiana and ultimately exonerated. They were not found to be guilty.

The devastating impact that has on the human mind and spirit for so many of these people who serve time in solitary confinement, many of whom are going to be ultimately released, is something the Federal Bureau of Prisons is now addressing.

You have been a prosecutor for many years. What is your view when it comes to incarceration and segregation or solitary confinement?

Ms. LYNCH. Senator, you raise important issues about the management of our prison system, which are charged with being the ultimate repository for those that we have concluded are seeking to harm Americans, but are also charged with doing so in a manner that is constitutional, that is effective, and that protects the safety of both the inmates and those who are guarding them.

So these are balances that we have to strike, and I take the view that certainly as we look at these issues, one of the benefits, I believe, of discourse like this, and that I hope to have going forward with this Committee, is continued discussion on those issues.

There are a number of municipalities, for example, that are looking at this very same issue. New York City is looking at it with respect to juvenile detention and looking to remove solitary confinement as an option for juvenile detention as well based on many of the similar studies that you are talking about.

I believe we have to look at those studies. We have to listen to the evidence that comes before us and make the best determination about how to handle what can be a dangerous prison population, but how to handle that prison population in a way that is both constitutional and effective.

Senator DURBIN. Thank you very much.

Thank you, Mr. Chairman.

Chairman GRASSLEY. Senator Graham is next.

Senator GRAHAM. Thank you. Thank you very much, Ms. Lynch, and congratulations on being chosen by the President. This is truly an honor, I am sure.

Do you support the death penalty?

Ms. LYNCH. Senator, I believe that the death penalty is an effective penalty. In fact, my office most recently was able to achieve—

Senator GRAHAM. How about “yes”?

Ms. LYNCH. A death verdict there.

Senator GRAHAM. Yes.

Ms. LYNCH. So we have sought it, yes.

Senator GRAHAM. Okay. That is good. Well, that is good from my point of view. I do not know about other people.

Sequestration. Have you had a chance to look at the impact sequestration will create on your ability to defend this Nation as Attorney General, all those who work for you?

Ms. LYNCH. Senator, with respect to sequestration, I have had an opportunity to review that matter very closely through my work on the Attorney General’s Advisory Committee and also as United States Attorney dealing with the budgetary limits that came down with the implementation of sequestration. As you are familiar with the history perhaps far more than I, it did constrain the Federal budget greatly about 18 months ago.

Senator GRAHAM. Is this a fair statement: “If Congress continues to implement sequestration, it will devastate the Department of Justice’s ability to effectively defend this country”?

Ms. LYNCH. Senator, I believe that that is not only a fair statement, but it is one that warrants serious discussion about how we manage budgets in a responsible manner, which I know is important to this body, but also giving us the tools that we need to protect the American people.

Senator GRAHAM. In your time in this business, have you ever seen more threats to our country than are presented today?

Ms. LYNCH. Certainly throughout my career as a prosecutor and U.S. Attorney, we are seeing an increased number and probably the highest number of threats that I have seen, not just from terrorist activity but the increased activity in terms of cybercrime is one that has not only increased numerically but qualitatively in the type of threat that we face.

Senator GRAHAM. So we need to up our game in the cybersecurity area fairly quickly. Do you agree with that?

Ms. LYNCH. We do need to make sure we have the resources we need to keep up with cybercrimes and also to get ahead of these criminals in terms of detection, in terms of prevention, even before we get to the apprehension of these criminals.

Senator GRAHAM. And there is just not criminals. Terrorists also are in the cyberbusiness. Is that correct?

Ms. LYNCH. Senator, you have outlined perhaps the greatest fear of any prosecutor—it is that the combination of a cyberattack being carried out on behalf of a terrorist entity is one that we take great pains to prevent, to detect, and to disrupt. But it is certainly an emerging threat, and it calls for resources beyond just mere personnel, but in terms of our own technology also.

Senator GRAHAM. Does it also cry out for Congress to take a comprehensive approach to our cyberproblems and pass legislation that would modernize our ability to deal with this threat?

Ms. LYNCH. Certainly a comprehensive approach is necessary. In my experience both in the Eastern District of New York and in talking to my colleagues, all of us are struck by the prevalence of cyberissues in every type of case that we prosecute now, much more so than even 5 or 10 years ago. And so we must have not only a comprehensive approach but one that allows Government to work with private industry as well to come up with ways to best protect us against this threat.

Senator GRAHAM. Could you give us an estimate—if not now, in the future—what it would cost to deport 11 million people?

Ms. LYNCH. Certainly, Senator, I can—I would not be able to give you that estimate now, and I would probably have to reach out to the Department of Homeland Security who would be charged with that particular action to see if they could provide that information to you.

Senator GRAHAM. Okay. Do you have a role in the deportation of people who are here illegally in the Department of Justice? Do you have any role at all there?

Ms. LYNCH. Well, that role is initially—in terms of deportation, the role is initially handled by the Department of Homeland Security. There are the immigration courts through which individuals can seek either asylum or redress from deportation orders that are handled by the Department of Justice. But that would be simply actually further along in the process.

Senator GRAHAM. But that is part of the process.

Ms. LYNCH. Yes, it is.

Senator GRAHAM. If you could maybe give us an estimate of what it would take to deport 11 million people from your lane, call the Department of Justice and see what they say, I think it would be instructive to us to see what the bill actually would be.

Now, do you think the National NSA Terrorist Surveillance Program is constitutional as it is today?

Ms. LYNCH. I am sorry?

Senator GRAHAM. Do you think the NSA Terrorist Surveillance Program that we have in effect today is constitutional?

Ms. LYNCH. Senator, I believe that it is constitutional and effective. I know that there are court challenges to it, and certainly we will abide by those court regulations.

Senator GRAHAM. Right.

Ms. LYNCH. But it has been a very effective tool in managing—

Senator GRAHAM. But you are okay with it being constitutional from your viewpoint?

Ms. LYNCH. Certainly constitutional and effective.

Senator GRAHAM. Thank you.

Marijuana. There are a lot of States legalizing marijuana for personal consumption. Is it a crime at the Federal level to possess marijuana?

Ms. LYNCH. Marijuana is still a criminal substance under Federal law, and it is still a crime not only to possess but to distribute under Federal law.

Senator GRAHAM. Under the doctrine of preemption, would the Federal law preempt States who are trying to legalize the substance?

Ms. LYNCH. Senator, I think you raise very important questions about the relation of the Federal criminal system with the States and their ability to regulate criminal law that they also have, as there is concurrent jurisdiction, and in terms of matters in which citizens of various States have voted.

With respect to the marijuana enforcement laws, it is still the policy of the administration and certainly would be my policy, if confirmed as Attorney General, to continue enforcing the marijuana laws, particularly with respect to the money-laundering aspect of it, where we see the evidence that marijuana, as I have noticed in cases in my own district, brings with it not only organized crime activity but great levels of violence.

Senator GRAHAM. Do you know Michele Leonhart, the DEA Administrator? I do not know if I said her name right.

Ms. LYNCH. She is the Administrator of the Drug Enforcement Administration.

Senator GRAHAM. Have you ever had a discussion with her about her views of legalizing marijuana?

Ms. LYNCH. Michele and I have not had that discussion, although we have spoken on any number of other issues.

Senator GRAHAM. Could you maybe have that discussion and report back to me as to what the results were?

Ms. LYNCH. Certainly, Senator. I look forward to speaking to not just Ms. Leonhart but with you on this issue.

Senator GRAHAM. On August 29, 2013, I think, Deputy Attorney General James M. Cole advised all U.S. Attorneys that enforcing marijuana laws against those that are in compliance with State marijuana laws would not be a priority of the DOJ. Did you get that memo?

Ms. LYNCH. All U.S. Attorneys received that memo, as did I.

Senator GRAHAM. Do you think that is a good policy?

Ms. LYNCH. I believe that the Deputy Attorney General's policy seeks to try and work with State systems that have chosen to take admittedly a different approach from the Federal Government with respect to marijuana and determined the most effective way to still pursue marijuana cases consistent with the States and the choices that they have made. The Deputy Attorney General's policy, as I understood it and as it has been implemented, still requires Federal prosecutors to seek prosecution of marijuana cases, particularly where we have situations where children are at risk, where marijuana is crossing State lines, particularly where you have marijuana being trafficked from a State that has chosen a legal framework into a State that has not chosen a legal framework and the attendant harms therein, as well as those who are driving under the influence of this.

A great concern certainly within the Department and those of us who are looking at these issues is the availability of the edible products and the risk of those falling into the hands of children and causing great harm there.

Senator GRAHAM. If a State is intending to try to legalize personal consumption at a small level of marijuana, what would your advice be to that State?

Ms. LYNCH. Well, certainly I am not sure that if a State were to reach out to the Department for its views—and I do not know that that has happened or what advice has been given, but certainly I believe the Department would have an obligation to inform them of the current Federal status of narcotics laws and the Department's position that the Federal narcotics laws will still be enforced by the Department of Justice.

Senator GRAHAM. In 2006, you signed an amicus brief supporting Planned Parenthood's opposition to the partial-birth abortion ban. Is that correct?

Ms. LYNCH. Yes, I was one of a number of former Department of Justice officials, although the amicus brief that we signed was focused on the issue of the facial issues of the law and how it might impact the perception of law enforcement's discretion and independence.

Senator GRAHAM. Okay. The only reason I mention that is that if there is a Republican President in the future and an Attorney General nominee takes an opposite view on an issue like abortion, I hope our friends on the other side will acknowledge it is okay to be an advocate for a cause as their lawyer. That does not disqualify you from serving.

Same-sex marriage. The courts are wrestling with this issue right now.

Ms. LYNCH. I am sorry?

Senator GRAHAM. Same-sex marriage, this may go to the Supreme Court very soon. If the Supreme Court rules that same-sex marriage bans are unconstitutional, it violates the U.S. Constitution for a State to try to limit marriage between a man and a woman, that is clearly the law of the land unless there is a constitutional amendment to change it. What legal rationale would be in play that would prohibit polygamy? What is the legal difference between a State—a ban on same-sex marriage being unconstitutional but a ban on polygamy being constitutional? Could you try to articulate how one could be banned under the Constitution and the other not?

Ms. LYNCH. Well, Senator, I have not been involved in the argument or analysis of the cases that have gone before the Supreme Court, and I am not comfortable undertaking legal analysis without having had the ability to undertake a review of the relevant facts and the precedent there. So I certainly would not be able to provide you with that analysis at this point in time, but I look forward to continuing the discussions with you.

Chairman GRASSLEY. Before the Senator from Rhode Island asks his questions, this would be my plan, and you tell me if this will give you enough time. The Rhode Island Senator, Senator Lee, and then Senator Klobuchar, that will take us to about 12:45. Then I was thinking of coming back about 1:30.

Ms. LYNCH. Thank you, Senator.

Chairman GRASSLEY. Is that going to give you enough time?

Ms. LYNCH. Yes, indeed. Thank you, Senator.

Chairman GRASSLEY. Okay. The Senator from Rhode Island.

Senator WHITEHOUSE. Thank you, Chairman.

Ms. Lynch, welcome to the Committee and congratulations on your nomination. I look forward to working with you on a considerable number of issues as we go forward.

Since there has been a significant amount of commentary about the President's immigration measures, the Ranking Member has asked me to put into the record letters from law enforcement leaders in Ohio, Utah, Iowa, Indiana, and Wisconsin supporting the President's policies and concluding, "While the executive reforms improve a broken immigration system, they can achieve only a fraction of what can be accomplished by broad congressional action. We continue to recognize that what our broken system truly needs is a permanent legislative solution and urge Congress to enact comprehensive immigration reform legislation."

There is a similar letter from the member organizations of the National Task Force on Sexual and Domestic Violence, and a similar statement for the record of Stan Marek of Texas, the president and CEO of the Marek Family of Companies. If I may ask unanimous consent that those be made a part of the record?

[Pause.]

Senator WHITEHOUSE. Without objection.

[The information appears as submissions for the record.]

Senator WHITEHOUSE. There has also been considerable commentary about Attorney General Holder in a hearing at which he does not have the opportunity to defend himself, and it is my view that a significant amount of that commentary would not withstand his ability to defend himself if he were here. So let me say in response to that, there are legal arguments and policies that fall outside a particular political ideology. That does not make them outside the mainstream, and it does not politicize a Department to make those arguments or pursue those policies.

I would argue actually that it is the effort to constrain the Department within that ideology that would be politicizing.

I would further note, as a former United States Attorney, that the Department that Attorney General Holder inherited was in a very grave state of disarray, and that is not just a matter of opinion. The Office of Legal Counsel wrote opinions that were so bad, so ill-informed, so ill-cited to the case law that pertained that when they were finally exposed to peer review, they were widely ridiculed and ultimately withdrawn by the previous administration.

We witnessed efforts to manipulate United States Attorneys—and I know that you are one, Ms. Lynch—that caused a very public rebellion among sitting U.S. Attorneys at the time and that drew in past U.S. Attorneys appointed by both Republican and Democratic Presidents. We were exposed to hiring practices within the Department that were on their face overtly political and had political litmus tests for hiring, a first in the Department's history—it had not gone down that way before—and ultimately a series of other issues as well as those led to the resignation of the Attorney General of the United States.

So it is easy to critique Attorney General Holder and blame him for politicizing the Department, but I think history's calm and dispassionate judgment will reflect that the Attorney General actually brought the Department back from a place where it had been,

sadly, politicized. And I can say firsthand that a lot of my U.S. Attorney colleagues, both from Republican and Democratic administrations, were very, very concerned about what was happening to the Department back then.

I should not waste the time of this hearing on that, but with all the things that have been said about Attorney General Holder, without him having the opportunity to defend and rebut, I wanted to say that.

These are some of the areas I think we need to work on together, Ms. Lynch, when you are confirmed, as I hope you will be.

Senator Graham raised the issue of cybersecurity, and he has been an extraordinarily helpful and forward-leaning Member of the Senate on protecting our country from the dangers of cyberattacks, whether ordinary criminal activity or the theft of intellectual property wholesale on behalf of Chinese industries or the really dangerous threat of laying in the cybersabotage traps that can be detonated later on in the event of a conflict.

I am concerned about the structure within the Department for handling cybersecurity. At an investigative level, it is spread across primarily the FBI, secondarily the Secret Service, and to a degree Homeland Security. Within the Department it falls under the rubric both of the Criminal Division and of the National Security Division.

And I hope that with the assistance of the Office of Management and Budget, you and I and the Office of Management and Budget and other interested Senators can continue a conversation about what the deployment of resources and structure should look like against the cybersecurity threat in the future. Will you agree to participate in such a process?

Ms. LYNCH. Certainly, Senator. I think you have outlined an important issue, and if confirmed as Attorney General, I will look forward to working with you and all of the relevant partners on this Committee and throughout Congress in making sure that the Department is best situated to handle this growing threat.

Senator WHITEHOUSE. There is considerable bipartisan legislation in the Senate on this subject, and I hope it is one where we can get something serious accomplished in the months ahead.

Another area where there is considerable bipartisan legislation is on sentencing reform. Senator Durbin mentioned his and Senator Lee's legislation that is at the front end, at the sentencing end. Senator Cornyn and I have an almost parallel bill that relates to the end of the sentence and how to encourage incarcerated people to get the type of job training, drug and alcohol rehabilitation, anger management, mental healthcare, family reconciliation, job training, whatever it is that they need, so that when they are put back into society, they have less chance of going back to a life of crime, of recidivating, as they say.

I think we have made a lot of progress on that, and I think we have very good legislation, and I hope that you and the Department will continue to be supportive of our efforts.

Ms. LYNCH. Certainly, Senator. You have raised I think the next challenge as we look at how to manage our prison population and the issue of crime, which is, How do we help people who are going to be released return to the communities from which they came

and become productive citizens as opposed to returning to the prior behavior, criminal behavior that not only landed them in prison but creates new victims? And that will certainly be an important part of my focus.

Within the Eastern District of New York, we are very strong participants in reentry programs that are sponsored by our colleagues at the Brooklyn District Attorney's Office in one of the most difficult neighborhoods in my district, in Brownsville. We work extensively with those reentry efforts, and those reentry efforts work exactly as you said in focusing on job training and focusing on building skills so that those coming out of prisons can become productive members of society as opposed to those who will continue to harm others in society.

So you certainly have raised very important issues, and I look forward to continuing the discussion with you and people on this Committee and throughout this body on those issues.

Senator WHITEHOUSE. Thank you.

Another piece of legislation we will be working on, thanks to the courtesy and care of our Chairman, Senator Grassley, is a reauthorization of the Juvenile Justice and Delinquency Prevention Act. It has been now 12 years since its last reauthorization. And I appreciate very much that the Chairman has been willing to work on this and has made it one of the priorities for this Committee. Obviously, the way in which juveniles are treated in our corrections system and are detained have been important issues for the Justice Department, and I would ask again for your cooperation and active support of our process going forward to reauthorize the JJDP.

Ms. LYNCH. Certainly, Senator. I think that the way in which we handle juveniles within the criminal justice system is something that is of great concern to me in terms of both my practice in the Eastern District of New York and also talking to my colleagues, the other U.S. Attorneys across the country who face these issues.

I believe it certainly is incumbent upon all of us to look at the latest research on issues of how juveniles develop and they manage themselves in certain environments and always be open to reviewing those.

I look forward to working with you and others in discussing that statute.

Senator WHITEHOUSE. In my last seconds, you and I have both had the experience of being United States Attorneys and I suspect we have both had the experience of finding people who were targets of our criminal enforcement efforts who, if we look back into their pasts, might have avoided our attention had they managed their drug or alcohol addiction—

Ms. LYNCH. Certainly.

Senator WHITEHOUSE [continuing]. Or gotten the mental health treatment that they needed. And it is sort of a—I guess it is almost—it is a societal sorrow when somebody like that does not get the treatment that they need and ends up in the criminal justice system and it is a great burden for the taxpayer.

We have other legislation, the Comprehensive Addiction Recovery Act, that I hope you will also work with us on to try to make sure that where we can intervene with appropriate addiction treatment and mental health treatment, we can steer people to a more

appropriate setting rather than burden the criminal justice system with what is often an inappropriate response to their conduct and to their condition.

Ms. LYNCH. Certainly, Senator. In my own district, our court has been very forward-thinking and very effective in setting up diversion programs and a pre-trial opportunity program that has provided great support for people and enabled them to provide treatment and learn to become productive members of society and, therefore, escape being trapped into a spiral of criminal behavior and the results thereof.

Chairman GRASSLEY. Thank you.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Chairman GRASSLEY. Thank you very much. And now Senator Lee.

Senator LEE. Thank you, Mr. Chairman. And thank you, Ms. Lynch, for joining us today. Thanks for your service to our country.

I also appreciated our visit recently when you came to my office and I am grateful to you for your support for sentencing reform. The bipartisan legislation that I am working on with Senator Durbin that he referenced a few minutes ago is important and I appreciate your views on that as well.

I want to speak with you briefly going back to prosecutorial discretion. As a former prosecutor, I assume you would agree with me that there are limits to prosecutorial discretion in the sense at least that it is intended to be an exception to the rule and not to swallow the rule itself.

Would you agree with me that far?

Ms. LYNCH. Certainly, sir. I believe that in every instance, every prosecutor has to make the best determination of the problems presented in their own area, in my case, in my district, and set priorities and within those priorities, exercise discretion.

Senator LEE. Right. Prosecutors inevitably have limited resources and so it is understandable why they would choose, when they have got to prioritize, to perhaps put more resources into punishing, for example, bank robberies than they do into punishing pickpocketers, and perhaps they might put more resources into going after pickpocketers than they do going after people who exceed the speed limit.

But at some point there are limits to this and that does not mean that it would be okay, that it would be a proper exercise of prosecutorial discretion to issue permits for people to speed. Right?

Ms. LYNCH. Certainly, sir. I think that if a prosecutor were to come to the view that they had to prioritize one crime over another, you would always still want to retain the ability. Even if it was an area that was not an immediate priority, if, for example, it became one because a particular neighborhood was being victimized or, again, to use your issue of speeding, there were deaths resulting from that, you would want to have the ability to still, if you could, take resources and focus on that issue. It might not be the first priority, but you would want to have the ability to go back and deal with that issue.

Senator LEE. And for that reason, prosecutorial authorities or law enforcement authorities typically do not go out and say we are only going to punish you for a civil violation involving a traffic of-

fense if you speed and then it results in an accident with injuries. They leave open the real possibility, indeed, the likelihood that someone can and will be brought to justice in one way or another for any civil violation they commit while speeding.

Ms. LYNCH. Well, certainly, I cannot speak to all law enforcement agencies. I know that depending upon the agency, sometimes the priorities are known. Sometimes they are expressed. Every office has guidelines. Certainly, the law enforcement agencies are aware of certain guidelines in terms of, for example, a dollar amount involving certain types of crimes.

Senator LEE. But if someone went out and said I am going to issue a permit to someone saying that they may speed, saying they may go up to 100 miles an hour without receiving a ticket, unless that person were also in charge of making the law in that jurisdiction, that would be a usurpation of the system by which our laws are made. Would you agree with that?

Ms. LYNCH. Again, without knowing more about it, I am not able to respond to the hypothetical. It certainly does not sound like something that a law enforcement officer would be engaged in, but, again, without knowing more of the facts, I am not able to really respond to your hypothetical.

Senator LEE. Okay. Thank you. Let us shift gears for a minute. Do you agree that citizens and groups of citizens should not be targeted by Government, should not be the recipients of adverse action by the Government based on their exercise of their First Amendment rights?

Ms. LYNCH. Certainly, I think that the First Amendment is one of the cornerstones of a free society and I believe that our jurisprudence has set forth great protections for individuals, as well as groups, in the exercise of their First Amendment rights to make sure that they are protected and not targeted.

I also would say that, certainly, as a career prosecutor and U.S. Attorney, there is really no place for bias or personal view in terms of how we approach the types of crimes that we pursue.

Senator LEE. And presumably you would say the same with respect to someone's exercise of their rights under the Fourth Amendment or the Fifth Amendment or the Sixth or the Seventh or the Eighth. Under any of those protections, somebody should not be punished by Government for exercising their rights under those provisions of the Constitution.

Ms. LYNCH. Certainly, I believe that there are safeguards in place to prevent that. I think we always certainly have to balance that with some—with the possibility of an extreme situation in which we may have to move quickly, for example, to protect someone or there is an imminent threat therein. But I believe that there are protections set up for that purpose.

Senator LEE. Second Amendment rights, as well, presumably then. Right?

Ms. LYNCH. I believe that certainly the Supreme Court has set forth clarity on this issue. And so, therefore, that—regardless of the amendment—that certainly that is a protected right.

Senator LEE. Are you aware that there is a program called Operation Choke Point within the Department of Justice and that through this program the Department of Justice and some other

Federal law enforcement agencies have on some occasions put financial pressure on legal businesses, including hardworking Americans who happen to be involved in the business of selling firearms and ammunition, by essentially telling banks not to do business with them?

Ms. LYNCH. I am generally familiar with the name Operation Choke Point and my understanding of it with respect to the Department of Justice's current work—again, I have not been involved in either the implementation or the creation of it. But my general understanding of it is that it looks to target financial institutions that are involved in perpetrating frauds upon consumers and where there might be a financial institution that is facilitating, for example, consumer bank accounts being looted or consumers essentially losing their bank accounts, that that is the target of that.

Again, I am not familiar enough with the specifics of it to know about the underlying businesses that the transaction might have originated from, but that is my understanding of the program.

Senator LEE. Okay. I assume it is safe to assume that should you be confirmed, you will work with me to make sure that legitimate law-abiding Americans are not targeted for their exercise of their Second Amendment rights.

Ms. LYNCH. On that and any other issue of importance to you, Senator. I look forward to hearing your concerns and working with you on them.

Senator LEE. Thank you. Thank you. I want to talk about civil forfeiture for a minute. Do you think it is fundamentally just and fair for the Government to be able to seize property from a citizen without having to prove that the citizen was guilty of any crime and based solely on a showing that there was probable cause to believe that that property was in some way used in connection with a crime?

Ms. LYNCH. Senator, I believe that civil forfeiture, civil and criminal forfeiture, are very important tools of the Department of Justice, as well as our State and local counterparts through State laws, in essentially managing or taking care of the first order of business, which is to take the profit out of criminal activity.

With respect to civil forfeiture, certainly as implemented by the Department, it is done pursuant to supervision by a court. It is done pursuant to court order and I believe that the protections are there.

Senator LEE. What if you just ask the average person on the street whether they thought the Government could or should be able to do that, should the Government be able to take your property absent a showing that you did anything wrong, thereafter requiring you, as a condition for getting your property back, whether it is a bank account that has been seized or frozen, whether it is a vehicle that has been seized, that you would have to go back and prove your innocence?

So you are guilty, in essence, until proven innocent, at least guilty in the sense that your property is gone. Do you think your average citizen would be comfortable with that?

Ms. LYNCH. Well, I certainly cannot speak in terms of what the average citizen would or would not be aware of there. I certainly

understand that there has been a lot of discussion and concern over asset forfeiture as a program as expressed by a number of people.

Senator LEE. And particularly at the State level, such that some States have adopted, in response to a pretty widespread citizen outcry, laws significantly restricting the use of civil forfeiture proceedings for that very reason, which leads to why I raise this with you. It is my understanding that the Department of Justice has, in many instances, been used as a conduit through which law enforcement officials at the State and local level can circumvent State laws restricting the use of civil forfeiture within the State court system.

In other words, where, under the State courts, the State law established system, that kind of forfeiture is prohibited, people can go through the Department of Justice. The Department of Justice will take out a fee, maybe 20 percent of the value of the assets seized, and then those can be returned. It is a process known as adoption.

Do you not think most Americans would find that concerning if the Federal Government is facilitating efforts to circumvent State laws that are designed to prohibit the very thing that they are doing?

Ms. LYNCH. I think that a number of people would have questions about how the Department of Justice manages its asset forfeiture program, and my understanding is that those questions have been raised about various aspects of it.

My understanding is that the Department is undertaking a review of its asset forfeiture program, and certainly, as U.S. Attorney, I am aware of the fact that the adoption program that you have just described, which did raise significant concerns from a number of parties, has actually been discontinued by the Department—that is the guidance that we have recently received—with some exceptions for things like items of danger, explosives and the like.

But it is part of an ongoing review of the asset forfeiture program and certainly, should I be confirmed, I look forward to continuing that review.

I would also say, Senator, that I look forward to continuing these discussions with you as you express concerns and interests on behalf of constituents or others as an important part of the Department being as transparent as possible in explaining how it operates.

Asset forfeiture is a wonderful tool. We return money to victims. We take the profit out of crime. But as with everything that we do, we want to make sure that we are being as responsive as possible to the people that we are serving.

Senator LEE. Thank you. I look forward to those additional discussions. And I see my time has expired.

Thank you very much.

Chairman GRASSLEY. Thank you, Senator Lee. And now Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much. And thank you so much to you. I understand I am the only thing that stands between you and your lunch and this entire room and their lunch. We will have a good 10 minutes here. Your dad seemed to enjoy that one.

[Laughter.]

Senator KLOBUCHAR. I think everyone knows you have an impressive résumé and the one thing that has not been brought up was something I actually read this weekend in the profile about you, as I was thinking about this old saying we have in our household that the obstacles on life's path are not just obstacles, they are the path. And no one represents that better than you, Loretta Lynch.

When I read about the story of you scoring so well on a test in elementary school that they did not believe that you had taken that test and then you took it again and scored even higher. The obstacles are the path. Or the time that you became the valedictorian of your class and the school officials said that it would be too controversial if you were the only valedictorian, and so they added some other students to be valedictorian.

I was thinking of all the Senators in this building: We may have more than a few valedictorians and I do not think that ever happened to them.

So I thank you for your courage and your perseverance and your parents' courage and perseverance that brought you to us today.

I was going to start with a question. I know you touched on it with Senator Schumer. As you know, I am a former prosecutor. My office had about 400 people. We worked really well with the U.S. Attorney's Office. Some of the U.S. Attorneys you know that I worked with, Todd Jones, who is now the head of our Bureau of Alcohol, Tobacco and Firearms, and then also Tom Heffelfinger, who was the U.S. Attorney under Bush, and now we have a guy named Andy Luger, who you are also aware of. And it has been very important, that relationship that we have had with local prosecutors and the U.S. Attorney's Office.

I wondered if you would talk a little bit more about how you would view that as the Attorney General in terms of how you would like your U.S. Attorneys to work with the local prosecutors, who, as you know, can be very inundated with a lot of cases. And sometimes we would view the U.S. Attorney's Office as getting the luxury to spend a lot of time on cases while we would be handling literally tens of thousands of cases coming in our doors.

Ms. LYNCH. Thank you, Senator. You touch upon an important part of my practice. One of the benefits of being the U.S. Attorney, as you have noted, is getting to know the other prosecutors, not just my fellow U.S. Attorneys, but also the numerous State and local prosecutors with whom we work so well.

I am so privileged in Brooklyn to have a strong relationship with the District Attorneys in my district, in all five counties, but also even outside of my district into Manhattan, into the Bronx and beyond.

We talk often on issues affecting our community. We talk often on issues affecting the entire district. I was privileged to be able to share starting my prescription drug initiative with the Brooklyn District Attorney's Office and also work closely with District Attorneys in Nassau and Suffolk County in handling the problem of prescription drug abuse, which has spiked, unfortunately, and led to violence and, in fact, deaths on Long Island.

Senator KLOBUCHAR. I think you know that the stats lately are that four out of five of heroin users started with prescription drugs and then they turned to heroin. I think people are shocked by that, but you see that connection with the heroin, as well.

Ms. LYNCH. We do, indeed, because of the opioid substance of both drugs and we are, in fact, seeing a resurgence in heroin not just in my district, but, unfortunately, across the country.

This problem, like so many others, is one that must be dealt with in a cooperative and collaborative manner and I am incredibly proud to say that all of my United States Attorneys colleagues take very seriously the opportunity and the privilege to work with our State and local counterparts in crafting prescription drug initiatives, heroin initiatives, along with our violent crime initiatives.

We work closely with our State and local counterparts to determine where is the best place for a case to be brought. We look at things like the type of sentence that can be achieved or the type of evidence that is admissible in the different proceedings, and we cannot have those discussions without building on a positive working relationship, and it has really been a hallmark of this U.S. Attorney community.

Should I be confirmed as Attorney General, I intend to draw upon that strength of my U.S. Attorney colleagues, as well as my State and local counterparts throughout the country. People who are at the ground zero of these problems often come up with the best solutions. They pull in the healthcare community. They pull in parents. They pull in community leaders and they come up with a solution that works that can often be replicated in other places.

I have seen that happen with my U.S. Attorney colleagues particularly in the area of heroin abuse and some of the initiatives that they are working on, as well.

So if confirmed as Attorney General, I intend to rely very heavily on my prosecutorial colleagues.

Senator KLOBUCHAR. Well, thank you very much for that answer. At some point, I think we have talked about this before, but Senator Cornyn and I did the drug take-back bill and we have finally gotten the rules out from DEA on that and we look forward to working with you on that.

Something else I was—I think I will talk to you later about your work in Rwanda, but the fact that you have done some very important international work, as well, but you have also done prosecution of international terrorists here at home. And what lessons have you taken from those cases?

I will tell you why this is important from a home State perspective. As you know, our U.S. Attorney's Office in Minnesota indicted and successfully prosecuted a number of Al-Shabaab members who had gone over to Somalia. We also had the first person killed in Syria fighting with ISIS was actually a Minnesotan. And our U.S. Attorney recently issued some indictments against others that have been recruited to fight over in Syria.

There is a pilot program that the Justice Department has involving three cities—L.A., Boston, and Minneapolis-St. Paul. There is going to be an extremism conference coming up.

But, could you, one, talk about your experience with these kinds of cases, and two, how you think that this pilot program should be

funded? We are concerned because it is coming out of general funds, and if you would support some kind of specific funding for the program?

Thank you.

Ms. LYNCH. Certainly, just talking initially on the subject of combating violent extremism, one of the most difficult things are young men and, increasingly, young women, many of them American citizens, who are turning to this radical brand of terror and being recruited to go overseas and become trained and are being sent back to perpetrate threats against the homeland.

And the sources of this and the reasons for this are debated endlessly and I think we need further discussion about that, but we must take steps to combat this. We must take steps to understand the level of disaffection that these individuals are feeling with their current society and also help them and their families understand the risks that they are facing.

Some of the most difficult conversations I have had have been when I have visited the mosques in my district and had, frankly, wonderful interaction with the participants there and wonderful interaction with the residents there, but we have talked about violent extremism and I have talked to parents who have said to me, "You know, I just don't understand why the Government is targeting my youth."

And we have had very frank discussions about how it is difficult for any parent to know what their children are seeing on the Internet and how they are responding to what is being put forth on the Internet and the harm that it does not just to our society, but also to those families, because they lose their children. They absolutely lose them when they are sucked up by this radical extremism and only to come back to be dealt with, as they will, by American justice.

Certainly, with respect to the number—the types of cases that my office has seen, we have seen individuals who started off as relatively peaceful individuals, from what we could tell, but were brought—were dragged into radical extremism, did travel overseas, were recruited to then return to the U.S. and perpetrate attacks there. We have seen that on more than one occasion.

Senator KLOBUCHAR. And the funding, are you aware of the pilot program that we have going in the Twin Cities?

Ms. LYNCH. Yes. Yes. A very important program.

Given the nature of the problems that have emanated from that community and how it—the devastation that it has essentially wrought within those families and within that community, I think those issues are very important.

Certainly, I look forward to working with you on finding the most effective way to fund those programs, because they have a lot to teach all of us who are working in this issue.

Senator KLOBUCHAR. Thank you. And the last thing I am going to ask about is sex trafficking. And I know you have done an impressive job of prioritizing the investigation and the prosecution of trafficking cases.

This is something Senator Cornyn and I again have a bill on sex trafficking, which is called the Safe Harbor bill, which is supported by a lot of the groups, which creates incentives for States to enact

laws which treat the victims of sex trafficking, the children, as true victims and not as perpetrators themselves.

We think we can build better cases that way so people will come and testify against those that are running the sex rings.

Could you talk about your work in this area and how you view these safe harbor laws?

Ms. LYNCH. Certainly, I think these safe harbor laws are an essential next step in helping the victims of this horrible scourge.

My office has been privileged to lead the way in prosecuting numerous individuals who have essentially tricked women through lies, deceit, also coercion and duress, even rape, before they are brought to this country and forced to work here as sexual slaves.

It is a tremendously degrading process to these women and one in which they find it difficult to escape because of either a language barrier or the fact that, sadly, often their children are being held in their home country to force them to behave and to force them to continue this activity.

And certainly some of the work that I am most proud of has been the efforts my office has undertaken with a number of the organizations that help victims of human trafficking and also with other governments to reunite these children with their mothers after the cases are over.

Senator KLOBUCHAR. Thank you. And I also look forward to working with you. We also have a number of domestic victims, I think 80 percent of the victims actually are from the U.S. as well.

Ms. LYNCH. Absolutely.

Senator KLOBUCHAR. Especially when you get to the oil patch of North Dakota and those kinds of places where the U.S. Attorney's Office has played a major role.

So thank you very much. Thank you for your grace under pressure today, and I hope the Chairman will let you get some lunch.

Thank you.

Ms. LYNCH. Thank you, Senator.

Chairman GRASSLEY. Are things going okay for you, Ms. Lynch?

Ms. LYNCH. Yes, and thank you for inquiring, Mr. Chairman.

Chairman GRASSLEY. We will now adjourn until 1:35.

[Whereupon, at 12:46 p.m., the Committee was recessed.]

[Whereupon, at 1:40 p.m., the Committee reconvened.]

Chairman GRASSLEY. Welcome back, Ms. Lynch. Hope you are ready to continue.

Ms. LYNCH. Thank you, Senator.

Chairman GRASSLEY. Okay. And according to the seniority arrangements that we are doing, Senator Cruz of Texas is next.

Senator CRUZ. Thank you, Mr. Chairman.

Good afternoon, Ms. Lynch.

Ms. LYNCH. Good afternoon, Senator.

Senator CRUZ. And congratulations on your nomination.

Congratulations to your family, who I know are justifiably proud of you for being nominated to this post.

Ms. LYNCH. Thank you, sir.

Senator CRUZ. You know, I will note a number of my friends and colleagues who practice law in New York have reached out to me with words of praise for you, describing your tenure as U.S. Attorney there as that of a no-nonsense prosecutor and as a U.S. Attor-

ney who honored and respected the law. And so for that, I congratulate you.

You began your remarks by describing how, with new attorneys in your office, you remind them that they take an oath not to the Attorney General, but to the Constitution.

That same thing is true for the Attorney General of the United States, and I have long expressed my very deep concerns with the conduct of the current Attorney General, Eric Holder.

The Attorney General has a long and distinguished history, a bipartisan history, of being willing to stand up to the Presidents who appointed them. Attorneys General in both parties have demonstrated fidelity to law and to the Constitution, even when it meant telling the President of their own party “no.”

Now, that is never easy to do, but part of what has made the Department of Justice special is that Attorneys General, both Democrat and Republican, have honored that commitment, as you noted to your young lawyers, to the Constitution, not to the President who has appointed them. My single greatest concern with the tenure of Attorney General Eric Holder is that I do not believe he has upheld that tradition. I believe that the Department of Justice has behaved more like a partisan operation for the President than an impartial law enforcement agency.

And so I want to ask you at the outset the simple question of, if confirmed, how would your tenure as Attorney General differ from that of Eric Holder’s?

Ms. LYNCH. Well, Senator, I think you have raised an important issue of the role of the Attorney General. As we have discussed, it is an incredibly important Cabinet member, but the Attorney General is a Cabinet member unlike other Cabinet members in that the obligation of the Attorney General is first and foremost to represent the American people, to protect and defend the Constitution, and to faithfully execute the laws as passed by this body.

In interacting with the White House or any agency, if confirmed as Attorney General, I would do so in the manner in which I have conducted myself as United States Attorney—with a full and fair evaluation of every matter brought before me, with a full and fair review of all of the relevant laws, with discussion with career prosecutors as well as even the most junior people, whom I have found to often have the best insight into matters. And only then will I make a determination as to the step to be taken.

Going forward, every Attorney General creates their own path. You have asked how I will be different from Eric Holder. I will be Loretta Lynch. I will be the person that I have always been as I have led my office through two terms as United States Attorney, focusing solely on the protection of the people of my district—

Senator CRUZ. Excellent.

Ms. LYNCH. And, if confirmed as Attorney General, on the protection of all of the American people.

One thing I do wish to say, Senator, is that with respect to the issues that you raise, I greatly appreciate your sharing them with me, both now and during the discussion that we had in your office.

I look forward to more discussions with you and your colleagues, and I want to pledge to you now that I will always listen to your concerns. I will consult with this body where appropriate, because

there is a great collective wisdom here and experience, both prosecutorial and legal. And I look forward to having a dialogue with you and, frankly, crafting a positive relationship, not just with this Committee, but with Congress.

Senator CRUZ. Well, Ms. Lynch, I thank you for that.

That commitment is welcome and would mark a sharp break from the practices of the current Department of Justice.

One of the frustrations of a number of Members of this Committee is that the Department has not been responsive to this Committee's requests and indeed, that—were that to change, that would be highly welcome.

Let me focus on one and, if time allows, two specific areas where I believe the Department has gone with partisan politics instead of upholding the law. And let us start with immigration, which has been a topic of much discussion already.

You mentioned in your opening statement that you had now taken the opportunity to review carefully the OLC opinion on the President's Executive amnesty. Do you agree with the legal analysis in the OLC opinion?

Ms. LYNCH. Senator, I have had occasion to review the OLC opinion that dealt with the Department of Homeland Security's request for a legal framework in how to prioritize removal of certain undocumented immigrants—or really, all the undocumented immigrants under their jurisdiction.

I did not see a grant of amnesty there or a pathway to citizenship. Certainly, as I reviewed the opinion as well as the letters from some scholars who wrote in support of it, it seemed to be a way to look for the legal framework based up on case law precedent, prior action of Congress, as well as the discretionary authority of the Department of Homeland Security to prioritize this removal.

And certainly, placing those most dangerous of the undocumented immigrants at the top of that list seemed to me to be a very reasonable exercise. Certainly I would want to hope—I would hope that the protection of those communities where undocumented immigrants involved in, for example, violent crime, gang activity, terrorism, would be at the top of the list.

Senator CRUZ. Ms. Lynch, you said now and before in your opening statement that you found the legal analysis reasonable. OLC operates in the place of the Attorney General of the United States, and an OLC opinion operates as the legal judgment of the Attorney General as the chief legal officer for the United States.

And so my question is quite simply do you agree with the legal analysis in that memorandum? Would it have been your legal analysis, had you been asked the same question?

Ms. LYNCH. Well, Senator, I certainly am not able to say at this point what my—if my legal analysis would have taken the same pathway and the same steps, because I have not reviewed all of the cases and reviewed all of the memoranda that I am sure went into that.

But what I can say is that, again, as the opinion seeks to talk about the exercise of Executive discretion, it seemed to be looking at precedent, actions of Congress, as well as the immigration laws, to see if there was a legal framework for the requested actions.

And what I noted was that for some of the actions, the Office of Legal Counsel found that there was a legal framework for some of the actions that the Department of Homeland Security wanted to set in place, but for some of the requested actions, the Office of Legal Counsel found that there was not the appropriate legal framework for some of those actions and said—and my understanding is advised the Department of Homeland Security that they should not proceed along certain ways. And my understanding is that that advice was taken. So I do believe that the Office of Legal Counsel has the important obligation to look at the law, look at the facts, look at the action that is being brought before it and say where there is an appropriate legal framework, as well as where there is not an appropriate legal framework.

Senator CRUZ. Ms. Lynch, I would note that I have twice asked you if you agree with the analysis, and you are a very talented lawyer and so I suspect it is not an accident that twice you have not answered that question. You have described what OLC did, but have not given a simple answer.

Do you agree with that analysis or not?

Ms. LYNCH. Senator, I have told you that I did find the analysis to be reasonable. I did find it to recognize the issues and it did seem to provide a reasonable basis.

Senator CRUZ. Well, in 2011, before the last election, President Obama said, “With respect to the notion that I can just suspend deportations through Executive order, that is just not the case, because there are laws on the books that Congress has passed.” Now, do you agree with what President Obama said in 2011?

Ms. LYNCH. Senator, I do not know what legal opinion he was relying on at the time. Certainly the subsequent legal opinion talks about the temporary deferral of deportation in a way that does provide a legal framework for it, but I do not know if the President was speaking of this exact same issue or not. I simply could not provide a legal opinion about the President’s comments at this time.

Senator CRUZ. Now, the Executive action—in my view, the OLC opinion has no legal basis whatsoever. It hinges upon the notion of prosecutorial discretion, and you rightly described how any prosecutor will prioritize some cases over others, for example, focusing on more violent criminals.

In your office, as U.S. Attorney, you have certainly exercised prosecutorial discretion. Was it your practice for any category of crimes to suggest to those who may have violated the criminal laws that they can come into your office and seek a written authorization exonerating them of their past crimes and authorizing them to continue carrying out crimes for a large categorical group of offenders?

Ms. LYNCH. Senator, we would not have that type of direct dealing with offenders. They would come to our attention as part of an investigation or part of an issue where they would already be under suspicion of some sort of wrongdoing. So we would not have that type of discussion with someone who might be represented or might have other rights. We would not have that type of discussion with someone.

Senator CRUZ. So that is not anything you ever did?

Ms. LYNCH. No. We do have priorities within my office. We do have guidelines within my office. Those are shared with our law enforcement colleagues. We also share them with many of our State and local colleagues as we discuss where to best place certain types of cases.

Senator CRUZ. Thank you very much, and we will continue later on in the day.

Chairman GRASSLEY. Thank you, Senator Cruz.

Senator Franken now.

Senator FRANKEN. Thank you, Mr. Chairman, and congratulations on being the Chairman.

Chairman GRASSLEY. Thank you. I am glad to be Chairman, I can tell you that.

Senator FRANKEN. Yes, I know. I know you are.

[Laughter.]

Senator FRANKEN. Ms. Lynch, congratulations on your nomination.

Ms. LYNCH. Thank you, Senator.

Senator FRANKEN. I was very—it was great meeting with you. Your reputation for being smart and tough precedes you.

And you did not disappoint in our meeting, and thank you for the wide-ranging conversation we had—how was lunch?

[Laughter.]

Ms. LYNCH. Excellent. Thank you, sir.

Senator FRANKEN. Yes. You enjoyed lunch?

Ms. LYNCH. Yes, sir.

Senator FRANKEN. Good.

I discussed a couple of things, or a number of things, when you were in my office, and I want to bring them up again and talk about them. One is our prison system. We have—

Ms. LYNCH. I am sorry.

Senator FRANKEN. Our prison system, I want to talk about our prison system. The United States has 5 percent of the world's population, 25 percent of the prison population, and I think one of the biggest problems is that we have used our criminal justice system as a substitute for a well-functioning mental health system. We have a lot of people in prison, in jails in this country who should not be—probably should not be there, and who—it is not serving anybody any purpose.

We have young people and others with mental illness who are in solitary confinement and it just makes their mental health worse. What I want to do to address that is something called the Justice and Mental Health Collaboration Act. It is a reauthorization of MIOTCRA, which is the Mentally Ill Offender Treatment and Crime Reduction Act, which has been very bipartisan in the past and should be—in fact, it is bipartisan. It has been carried by a Republican in the House.

And I just want to ask you for your support, as we go forward, in making sure that our criminal justice system is not just wasting money, but wasting lives, and that you will work together with me on that.

Ms. LYNCH. Senator, I look forward to working together with you on that as well as other important issues.

I think you have highlighted—one of the most important developments in criminal justice research and literature has been the ongoing research that has been done into the root causes of so much of our criminal activity. In particular, where the mentally ill are involved, we continue to learn more and more about how that illness impacts them as they make their way through the criminal justice system. And I look forward to taking advantage of that new knowledge with you and working with you on that and other important issues.

Senator FRANKEN. Some of this involves—I do not know if you have heard of crisis intervention training, but crisis intervention training is teaching both police on the ground and corrections officials in prisons to recognize when they are seeing someone with a mental health problem, and to deal with it in the correct way.

Ms. LYNCH. Certainly. Certainly, because I think the research has shown—and certainly anyone with experience with a family member or friend who has a mental illness knows—that sometimes conditions may manifest themselves in ways that appear to be disruptive but are, in fact, a reflection of the illness.

Senator FRANKEN. And so what I will be doing with this is doing mental health courts so that if a prosecutor and an arresting officer and the defense attorney and the judge say this person belongs in a mental health court so that they can be treated and not go to prison, where it is going to clog up the prison system and make this person's condition worse, then we will do that.

And also, to do veterans courts, because we have so many veterans that are coming back with invisible wounds.

Ms. LYNCH. Yes.

Senator FRANKEN. And sometimes those invisible wounds will be medicated by drugs or by alcohol, and instead of going to prison, maybe it is time we can go to a veterans court.

Ms. LYNCH. Certainly, Senator. I know that some of my U.S. Attorney colleagues have been instrumental in working on the concept of veterans courts in particular as part of the Department's strong commitment to protecting all of the rights of veterans.

You are so correct. We ask so much of our men and women in uniform, and they come back to us often different from how they left, with wounds that we can see and wounds that we often cannot see. And I believe we have an obligation to provide them the best treatment, to thank them for their service to our country.

Senator FRANKEN. Fabulous. I look forward to working with you on that, should you be confirmed, which I hope you will.

Let me move on to something kind of specific. I was Chair and now will be Ranking Member of the Privacy, Technology and the Law Subcommittee. And there is a lot of technology out there that is new, that we are learning about some unforeseen consequences of it. There is a thing called stalking apps; I do not know if you know about it. Yes, we discussed this.

And—incredible. When I first did a location Privacy Subcommittee hearing, my first hearing, I got some testimony from the Minnesota Coalition for Battered Women. And they told us a story about a woman who had an abusive partner, and she went to a county building in St. Louis County in Northern Minnesota. And while she was there, on her phone she got a text from her abuser,

“Why are you in the county building? Are you going to the domestic violence place?” Well, it scared her so much they took her to the courthouse to file an order against him. While she is there, she gets this text from him saying, “Why are you at the courthouse? Are you getting a restraining order against me?” This terrified her. And it turns out—and we have had testimony on this—this is very common.

Now, DOJ does have the authority under existing wiretap laws to prosecute the creator of apps that allow stalkers to listen to their victims’ phone calls, intercept text messages or otherwise intercept content from victims’ phones. And DOJ has prosecuted one app developer who created an app to do this thing, and I would ask that you continue to do that.

But looking ahead, would you work with me? I have a bill to stop these things, to stop the marketing—the manufacturing of stalking apps. And also would ask that DOJ keep data on this. Because the last real data we have on this is, like, from 2006. And I do not know how much you keep up with technology, but since then, a lot more people have these smart phones, and this is a real problem.

Ms. LYNCH. Senator, you have outlined a very important issue as it relates to the victims of domestic violence or anyone who fears that someone that they thought was close to them might turn on them instead. And certainly I look forward to working with you and keeping you apprised not only of the Department’s efforts in the continued prosecution of these matters, but to look at this statute with you and provide whatever assistance we can.

Senator FRANKEN. Thank you. I look forward to that as well.

And one last thing; I have about two minutes. I am very concerned about the telecommunications industry consolidating, and I am specifically concerned about Comcast’s proposed acquisition of Time Warner Cable. This is the largest cable provider and the second-largest cable provider. It is the largest broadband Internet provider and the third-largest broadband Internet provider.

To me, this is just too big, and they would have unprecedented power in the telecommunications industry. I have—there has been a lot of comment on this, including my comment on this to the Antitrust Division. Will you commit to reviewing the serious concerns about the proposed Comcast-Time Warner deal that I and so many others have raised? And just do all that you can to ensure that the Antitrust Division is empowered to stand up to telecommunications giants like Comcast, if that is what it deems necessary?

Ms. LYNCH. Certainly, Senator. The Antitrust Division plays an extremely important role in keeping our markets competitive and open for everyone, and I look forward to learning more about this case, to reviewing those issues and to working with you to make sure that all of the concerns about this are brought to our attention so that they can be dealt with by the Antitrust Division as we move forward.

Senator FRANKEN. Okay, then, I will probably vote for you.

[Laughter.]

Senator FRANKEN. Thank you. Thank you, Mr. Chairman.

Chairman GRASSLEY. Thank you, Senator from Minnesota.

Now we go to Senator Flake.

Senator FLAKE. Thank you, Mr. Chairman.

And thank you, Ms. Lynch. I appreciated hearing your life story and seeing your family here, and appreciated the meeting we had in my office a few months ago as well.

I brought something up there and I will bring it up to you again with regard to the border situation in Arizona.

We have had, obviously, ongoing problems on the border; we share such a large border with Mexico. But there have been some considerable successes, and one of the successes over the past several years has been in the so-called Yuma Sector, where we have seen apprehensions go from about 140,000 in fiscal year 2005 to about 6,000 last year. And so, considerable success.

That contrasts with the Tucson Sector, which has seen a drop, I think, because of the economy; we have seen a drop anyway, but not nearly as significant. In fact, there were about 87,000 apprehensions in the Tucson Sector.

One of the things that I think just about everybody attributes success in the Yuma Sector to is something called Operation Streamline, and it allows a so-called consequences program to be implemented where first-time crossers are met with consequences. And it is pointed to by certainly law enforcement organizations in Yuma and along that sector, and just about everyone else recognizes it has been successful.

The problem is just last year it looks like DOJ has said that they are no longer going to implement parts of that, and that first-time offenders, unless there is some other circumstance, they will not be prosecuted.

What are the specifics of this new policy, as you understand it, with Operation Streamline?

Ms. LYNCH. Certainly, Senator. I have had the opportunity to know somewhat about this matter from my discussions with my colleagues, the U.S. Attorneys, not just along the Arizona border, but also in Texas and California.

And they work hard every day to keep our border safe and essentially to protect the people in their districts, but also to deal with this ever-growing problem.

And I believe that—again, I am not familiar with the current status of Operation Streamline, but as it relates to first-time prosecutions of individuals.

Individuals are still being prosecuted, and to the extent that a first-time crosser would not be prosecuted, they still would be subject to just pure removal without there being a criminal case involved.

And I believe that the issues in managing the program had a great deal to do with resources, particularly with the budget constraints that offices have found themselves under in recent years. But I can assure you, Senator, that the commitment to protect the border is strong, not only among the U.S. Attorneys who work on the border, but throughout the U.S. Attorney community and the Department, and would be one of my priorities also, as Attorney General.

Senator FLAKE. As I mentioned, this is what distinguishes the Yuma Sector from the others—it is the success with this program. If you are saying now that it is a budget issue, why haven't we

seen concern about the budget or those budget aspects? Why hasn't DOJ come to Congress and said, we are having issues here, and so in order to continue with this program, we are going to need additional funding? To your knowledge, has that happened?

Ms. LYNCH. I am not aware of what has gone into the specifics of the Department's budget. I am generally aware of the budget as it relates to U.S. Attorneys, but not the Department as a whole or as it relates to specific programs, so I am not able to provide that information to you.

Certainly, this is certainly something that I would be working closely on, should I be confirmed as Attorney General.

Senator FLAKE. I guess I will put it this way. Barring budget issues, is this a program that you are committed to, or do you have other issues with it?

Ms. LYNCH. Certainly it is a program that I think has been effective. I think there have been concerns raised about resources and about the way the program has been managed, from the judiciary and others. We are always trying to be responsive to all of the parties involved in these.

But with respect to the issue itself, I am certainly committed to working on that issue with you and the Members of this Committee, be it through Operation Streamline, if it can be maintained, or in an equally effective program.

Senator FLAKE. Okay. Well, the record—we have not, to my knowledge, received any concerns about budget issues with regard to Operation Streamline. It seems to have been another decision that was made. And I will be following up with you.

We want to make sure that—let me just step back. I believe we need to do a lot with regard to immigration policy. I am a sponsor of the comprehensive bill that went through the Congress two years ago, through the Senate, and did not get through the House. So this is not all we need to do, but it is a significant part of what we need to do.

And Arizonans have paid the price, a disproportionate price, for a long time for the Federal Government's failure to have a secure border. And so when we have programs like this that work and we see success in one sector, and everybody can point to that, then it is very disturbing when DOJ pulls back on that. And we fear that the Yuma Sector, as the economy kicks up again and the crossings are more frequent, that we are going to have the same problems that we had a few years ago. And we cannot go on with that.

Secretary Johnson is in Arizona, or just visited Arizona and visited the border. He's done that a few times, met with the ranchers, with some of their concerns, particularly in the Tucson Sector. And there is still a lot that needs to be done, and it is going to require a real partnership between a lot of people to make sure that it works.

Switching gears, some of my colleagues have mentioned trade secrets and economic espionage. But just to focus specifically on the theft of trade secrets and foreign governments, last May the Department of Justice announced the indictments of five Chinese military hackers for foreign theft of trade secrets and economic espionage, among other crimes.

When announcing these charges, Attorney General Holder said that the administration will not tolerate actions by any nation that seeks to illegally sabotage American companies and undermine the integrity of fair competition and free markets. This case will serve as a wake-up call to the seriousness of ongoing cyberthreats, he said. Would you agree with Attorney General Holder's statement, as well as other statements by the executive branch that this is a growing and persistent threat?

Ms. LYNCH. Senator, I would agree with those statements, and I would add that I have seen through cases in my own district that this is a growing and increasing threat. My office has also worked on matters involving foreign nations attempting to obtain technology under false pretenses. We have worked closely with our colleagues in other agencies to bring these cases to fruition. I am very proud of the work that we have done.

And it is an ever-growing concern, certainly, and has also been expressed by the FBI, not only under the current director, but under former Director Mueller. So I look forward to working closely with our law enforcement partners and with this body to deal with the numerous ways that we have to fight this problem.

Senator FLAKE. Last Congress I introduced the Future of America Innovation and Research Act, or the FAIR Act, that provides companies with a legal remedy when their trade secrets are stolen from abroad.

The concern is that since the Economic Espionage Act was enacted in 1996, I think there have only been 10 convictions under Section 1831. That is a lot of time for just a few convictions. Since the FBI cannot investigate and DOJ cannot prosecute every single theft of trade secrets, does it make sense that there might be a Federal civil action, cause of action that could help these companies through another remedy? Does that make any sense?

Ms. LYNCH. Well, certainly, Senator. From my experience in advising companies, boards, and general counsel, I understand the importance of corporations being empowered to act on their own behalf and protect their intellectual property and their trade secrets.

I have not had the opportunity to study the bill that you discuss, but I certainly look forward to doing so and having further discussions with you.

Senator FLAKE. Well, I appreciate that.

Victims services, another area that has been of some concern. Last year Congress passed the Victim of Child Abuse Act Reauthorization and I was pleased that the sponsors of the bill agreed to include an important provision that clarified Congress' intent that the money from the crime victims' fund should only be used to assist victims of crime. Will you commit to follow that new law and direct the victim advocates in the U.S. Attorney's Offices that this money only be used for victims? In the past we have seen it used for witness travel and other administrative duties and not actually focus on the victims.

Ms. LYNCH. Certainly the management of the issue of how to provide not only restitution but support to victims is an important one to the Department and to me as a United States Attorney. And I think that we would have to work to implement the law that you have discussed. My understanding is that it is being implemented,

certainly that guidance has gone out to ensure that the victim advocates and offices are being appropriately focused.

I know in my own office we have victim advocates who work closely with the victims of crimes—families who have suffered incredible loss—and provide great support to them.

And I fully support empowering those professionals.

So, yes, Senator, I believe that the law that you mention is one that is being implemented. I certainly will commit to ensuring that it is so.

Senator FLAKE. Okay. Thank you and should you be confirmed, I look forward to working with you.

Ms. LYNCH. Thank you, sir.

Chairman GRASSLEY. The next person is Senator Blumenthal and when Senator Coons comes back, obviously we skipped over him, I will call on him as the next Democrat.

Senator BLUMENTHAL. Thank you, Mr. Chairman. And thank you for your courtesy and thoughtfulness in the way that you have conducted this hearing and I am proud to serve under you as Chairman.

Chairman GRASSLEY. Thank you.

Senator BLUMENTHAL. And thank you, U.S. Attorney Lynch, for being here today and also for having your family here. Welcome to your husband, Stephen, and your dad, Lorenzo. The two most common words, I think, that have been used to describe you are “smart” and “tough.” And I can see from your dad and I am sure it is true of your mom, that you come by those qualities honestly.

Ms. LYNCH. Yes.

Senator BLUMENTHAL. In the best sense of the word. And you should be very proud of your daughter. Your testimony has been among the most accomplished and impressive that I have seen as a Member of this Committee.

And I am sure you have done yourself a lot of good today, not that you necessarily needed it, but thank you for your very forthright and erudite answers.

I want to begin by focusing on human trafficking. You have a great record on human trafficking. I count 10 major prosecutions that you have done while United States Attorney, focusing particularly on targeted sex trafficking while also pursuing labor trafficking.

And in a case that you brought against the 7-Eleven franchisees, you stated publicly that the defendants were running a modern-day plantation system and the system looked a lot like modern-day slavery.

You brought the case relying on statutes relating to immigration enforcement and identity theft and wire fraud, not on the statutes that specifically focus on criminalizing human trafficking. I wonder whether you could relate to us whether you think those statutes need to be strengthened?

If you could not, in a sense, rely on them, to bring those cases based on human trafficking, whether we should perhaps strengthen them. And in particular, the Trafficking Victims Protection Act of 2000 provided mandatory restitution for trafficking victims, a provision that is unfortunately more unenforced than enforced, in fact rarely enforced, I think, to provide for restitution.

A recent study by the Human Trafficking Pro Bono Legal Center took a look at how this requirement works in practice and they found that in only about 36.6 percent of the cases did prosecutors bother to request restitution. So my question is really two-fold.

Number one, do the statutes need to be strengthened, and number two, can you and would you do more to make sure that restitution is provided to the victims of human trafficking?

Ms. LYNCH. Certainly, Senator. The issue of restitution for the victims of human trafficking is an important one, particularly as we do increase the number of cases that we bring.

Certainly sometimes there are situations where a court may not impose restitution because the funds are not there, or for other legal reasons. But where we can, we always do seek a restitution order for the victims.

We, in particular, have worked with other governments to provide them information where we have found, for example, that certain small cities in Mexico have been a prime source of those who would traffic women into the United States, into the Eastern District of New York. We have worked with the Mexican government to provide them information so that they could possibly effect asset seizures that we could not, under our particular asset forfeiture laws.

So it is a very, very important issue to me as United States Attorney, and should I be confirmed as Attorney General, it would be one that I would look forward to working with you on to make sure that all of the laws involving victim protection are as strong as possible.

With respect to the 7-Eleven case, we did not have the evidence that the workers had been moved across State lines to effectuate the crime. And so, therefore, we would not have been able to use the trafficking laws per se. But as with that case, with every case, we look at the relevant facts and the laws and bring the strongest case that we can. And certainly where we have seen numerous, numerous incidences of children and women being trafficked from within the United States, sometimes even simply just crossing one State border as well as from overseas, we have never hesitated to act. And, should I become Attorney General, it will be one of my priorities.

Senator BLUMENTHAL. I would welcome that priority very much as the Co-Chairman of the Human Trafficking Caucus in the Senate. It is a very bipartisan one; the Co-Chairman is Senator Rob Portman of Ohio. So I look forward to working with you on it.

First of all, I welcome your comments about the invisible wounds of war. Thank you to your uncles and cousins for their service in Vietnam.

Ms. LYNCH. Yes.

Senator BLUMENTHAL. And to your brother for his service as a Navy SEAL. I say that as a dad of a Marine Corps Reserve veteran who served in Afghanistan and another son who is currently in the Navy. And I would hope that you will continue to focus on those issues relating to post-traumatic stress and traumatic brain injury as they may be a cause of certain kinds of conduct that may be unwelcome, may even be criminal, because what we found is that a better understanding of those invisible wounds of war and the

inner demons that many of our veterans bring back with them can lead to more thoughtful and humane treatment through our criminal justice system.

I want to ask you, finally, in the time that I have, about one of the criticisms that has been made of the Department of Justice in its allegedly too-lenient treatment of certain corporate defendants as being too big to jail, so to speak.

In remarks that you made after the Department of Justice entered into a settlement with HSBC for money laundering—I am sure you recall it—you said that the settlement had deterred that company, but you were not sure that it would deter other companies. So my question is whether more can be done to more aggressively prosecute white-collar crime, corporate crime, to dispel at least the widespread impression or perception that perhaps the Department of Justice has been too lenient, and in particular would you work with me on a bill that I have offered that would make certain corporate officers criminally liable if they are aware of the significant, potentially deadly risk to workers—workplace safety problems—and fail to act or make it public?

So this bill is called Hide No Harm. It is a bill that is designed to protect workers on their jobs and it focuses on that part of the potential wrongdoing that may be committed by corporate officers. But also, again, a two-part question. Would you consider pursuing more aggressively criminal laws that may be applied to corporate officers who are involved in malfeasance or violations of Federal criminal laws generally?

Ms. LYNCH. Certainly, Senator. When it comes to white-collar crime or any kind of crime, as a career prosecutor and as U.S. Attorney, I have been very aggressive in pursuing those types of cases.

With respect to should I become confirmed as Attorney General, I would continue that and direct that the Department of Justice continue its focus on examining the facts of every case following the law wherever it took us.

At the outset, no individual is too big to jail. No one is above the law.

There are certain situations where we come to a different resolution or may decide that a civil resolution is appropriate, but that is only after a full and fair analysis of all of the facts and the law and the relevant burdens under the criminal justice system or the civil system.

But that being said, Senator, I believe if you look at the record of the Eastern District of New York, we have prosecuted a number of corporate officers for insider trading with respect to the Brooks case, and corporate malfeasance in other cases, as well as for violations of the FCPA. We have struck significant—wrung significant concessions from corporations and made major changes in the way in which corporations and financial institutions are structured and operate that act as deterrent. And we have been very clear with respect to the industries within which we are looking that, should a corporation not engage in preventive behavior or should they not take seriously the type of investigation that we bring, that criminal charges will be brought.

Senator BLUMENTHAL. Thank you. And I know of your very aggressive and distinguished record in this area and it is one of the reasons why I strongly support you and I look forward to voting for you and working with you on all of these topics and also reform of the Foreign Intelligence Surveillance Court.

Ms. LYNCH. Yes.

Senator BLUMENTHAL. As you know, I have advocated a public advocate to defend and advocate constitutional liberties in the course of this secret proceeding, the Foreign Intelligence Surveillance Court. I am not going to ask you to commit on that issue, but I hope that you will work with me on it as well as these other issues. And I very much appreciate your being here today and your public service and your family's service. Thank you very much.

Thanks, Mr. Chairman.

Chairman GRASSLEY. Thank you.

Ms. LYNCH. Thank you, Senator.

Chairman GRASSLEY. Thank you, Senator Blumenthal.

Now I go to Senator Vitter.

Senator VITTER. Thank you, Mr. Chairman and thank you Madam U.S. Attorney and thank you for the meeting in my office. As I told you at the time, I was very disappointed and frustrated because you did not respond directly to any of my big topics. And you said you would look into these matters and consider them. And as I promised, I restated the big questions in writing and I was further disappointed when yesterday I got a letter saying there would be no response to that. But maybe the third time is a charm for me asking them. So we will try here.

As I told you in my office, like many, many citizens and Members of the Senate, I have a huge concern regarding what I think is the President's illegal, unconstitutional Executive amnesty. And I have a huge concern of the fact that you think it is within the law. And we were talking about that.

So I am going to put up what is the central statutory argument that the President's lawyers point to in terms of his allegedly having authority for this Executive amnesty.

And it talks about granting parole only on a case-by-case basis. So I guess one of my key questions which we talked about in my office is do you really think his granting this amnesty, this new status, to about 5 million illegal aliens is acting on a case-by-case basis as mandated by the statute?

Ms. LYNCH. Senator, I greatly appreciate the question as well as the opportunity that we had to discuss the matters in your office. With respect, again, to my review of the opinion supporting the Department of Homeland Security's request for a legal basis for taking certain actions and prioritizing removal, as indicated, I did find it to be reasonable that we would prioritize removal of the most dangerous undocumented immigrants with our limited resources. Particularly those who were involved in violent crime, terrorism, recent crossers, those with criminal records—that seemed to me to be acting in the interest of public safety and appropriate.

With respect to other individuals who may not be as high on that priority list, my understanding is that that is a status that they will have for a brief period of time.

And certainly as you look at the issue of Executive discretion or prosecutorial discretion, you always want to have the ability to still look at individuals and make a determination as to whether or not they should be in that lower priority. And I did not see anything in the—

Senator VITTER. Ms. Lynch, as we talked about in my office though, his action goes well beyond setting prosecutorial priorities, does it not? Apart from that, he goes further in granting this broad category of folks a certain status for three years at a time. And then he takes another affirmative step in giving them a work permit. So those two steps are going beyond setting priorities for prosecution, are they not?

Ms. LYNCH. Well, certainly, Senator, as relates to how the Department of Homeland Security manages the removal process for those in the low-priority category, however they may be determined to be, again, I am not aware if those regulations have been set forth yet, so I cannot comment on how they will be implemented. But I am—

Senator VITTER. Does his plan go beyond setting priorities for prosecution or not? Doesn't it in fact go beyond that by granting these folks a parole status and giving them a work permit? Isn't that something additional to simply setting internal priorities for prosecution of these cases?

Ms. LYNCH. Well, Senator, just one minor point at the outset. I believe that the Department of Homeland Security's action refers to removal and not necessarily prosecution. Certainly, with respect to prosecution, there is still robust prosecution under the immigration laws and in my own district they are a tool that I use frequently.

With respect also to what would happen to those individuals who would be in a lower priority status, for lack of a better word, again, I am not sure how the Department will go about implementing that. My understanding is that the issue was: Was there a legal framework for establishing such a program? And the opinion indicated that there was.

Senator VITTER. Do you agree with that opinion?

Ms. LYNCH. I believe individuals still have to apply, at which point there would have to be a review of their eligibility and the like.

Senator VITTER. Fundamentally, do you agree with the legal opinion we are talking about?

Ms. LYNCH. I thought that the opinion was reasonable.

I also thought that it made distinctions.

Senator VITTER. Again, going back to that legal opinion, put that back up, this is a key element of it. So do you think that action that is applying to about 5 million illegal aliens is operating on a case-by-case basis?

Ms. LYNCH. Senator, again, I am not familiar with how the Department of Homeland Security will be actually implementing the orders that it will be reviewing, and the applications that it will be reviewing. So I am not able to provide you with the specifics.

Senator VITTER. But you have read the orders. Do you think that lays out a system that is operated on a case-by-case basis?

Ms. LYNCH. With respect to my review of the Office of Legal Counsel opinion, it did provide a reasonable basis both for the removal and for the prioritization of certain people as it came to removal. When it came to the issue of whether or not there could be a program for deferral, it seemed to refer to legal precedent, to the statute itself, and to actions by this body, among others. So it certainly seemed to provide a legal framework for that.

And I believe, also, what I thought was noteworthy was that with respect to the opinion, some of the requested actions by the Department of Homeland Security the Office of Legal Counsel found did not have the appropriate legal framework that would have made them something that could be carried out under the current legal system. And so the advice was not to go forward with certain—

Senator VITTER. Okay. Well, I will take it as a yes, that this is operating on a case-by-case basis. And I just think that is really a clear obvious stretch to say that this action that is going to affect 5 million people is following the law on a case-by-case basis.

The law also says—in fact, this same specific citation—it says, this decision on a case-by-case basis has to be made by the Attorney General. Now, is it your understanding, under the President's plan, that if you are the Attorney General, you are going to be in the middle of that process making those decisions?

Ms. LYNCH. Well, Senator, I am not aware of the regulatory framework and the rules that have come out around this statute as to how that authority is either delegated or exercised. So I am not able to give you an exact answer right now as to how that would specifically be implemented—

Senator VITTER. Well, I have read the plan, and the plan as I read it, is for all of that to be done in the Department of Homeland Security. So my question would be, what is the statutory basis to allow that when under the statute, not some order, not some legal opinion, the statute, the law, word-by-word, it says the Attorney General is in the middle of that decision on a case-by-case basis.

Ms. LYNCH. So, again, Senator, as presented to me by you, today, and thank you for that information, again, I am not familiar with the ways in which that particular authority has been exercised by the Attorney General—whether it has been delegated or how it is shared with the Department of Homeland Security—so I am not able to provide you with the specifics at this point as to how I would exercise that authority.

Senator VITTER. Well, again, I will have to be following up for the fourth time, but that will be a central question. The plan is not for the Attorney General to be in the middle of this at all. The statute says that the Attorney General is. Why aren't we following the statute?

Let me go to another case that goes to following the law which Senator Hatch brought up earlier, which is, your comments regarding the Department of Justice's initiative, Smart on Crime initiative. Now, as I read it, and based on what I know, this is just a way to clearly ignore mandatory minimums. And there are crimes that have mandatory minimums. We can have a good debate about whether those should be lowered in some cases or not, but they are

what they are. They are in the statute. So why aren't we following the statute with regard to crimes with mandatory minimums?

Ms. LYNCH. Well, Senator, with respect to enforcement of the narcotics laws that contain those mandatory minimums, laws which I have had occasion to use on numerous occasions as an Assistant U.S. Attorney, as a career prosecutor, and as U.S. Attorney, those laws are being followed, not just by my office, but throughout the U.S. Attorney community as well as by a number of offices who have sought to prioritize how to handle those cases in an era of limited resources. The issue with Smart on Crime is focused on when is it best to use the mandatory minimums and when do we not necessarily have to use them? But every office still retains and in fact exercises the discretion to impose a mandatory minimum sentence should someone who may not on the fact of the policy fall into that category, but upon review of the case clearly does. And that has and is being done.

Senator VITTER. So when is it best to use the mandatory minimums? So the mandatory minimums are not mandatory?

Chairman GRASSLEY. When you get done with that answer, then I will call on Senator Coons.

Ms. LYNCH. Surely.

Chairman GRASSLEY. Go ahead.

Ms. LYNCH. Senator, with respect to the narcotics policy, certainly as we handle these cases in the Eastern District of New York, we rely heavily on the mandatory minimum statutes when dealing with numerous drug kingpins that we have built significant trafficking cases against, many of whom have been extradited from foreign countries, or have been operating within our district.

My fellow U.S. Attorneys use the mandatory minimum statutes in a similar way. We all look, however, at the nature of the crime problem in our district and the nature of the narcotics problem in particular in our district. And the case that may require a mandatory minimum in my district may not occur in another part of the country. Another part of the country may have a different type of narcotics problem and would have a different population of defendants than you would find in Brooklyn subject to the mandatory minimum statutes. But they are still being utilized, Senator.

Senator VITTER. Mr. Chairman, just in closing, I just observed that—I mean, that is taking all meaning out of the word “mandatory.” It is replacing your and your colleagues’ judgment for the judgment of folks who wrote the law. And that is what this whole discussion and debate is about. Thank you.

Chairman GRASSLEY. [Off microphone.]

And for the witness, if there is nobody here and you want to take a break, take a break.

Ms. LYNCH. Thank you, sir.

Chairman GRASSLEY. But as soon as somebody gets here, I hope you can come back right away.

Senator Coons.

Senator COONS. Thank you, Chairman Grassley.

Ms. Lynch, congratulations on your historic nomination and your very fine conduct in this hearing today.

The Attorney General of the United States is one of the most important offices for which this Committee has oversight responsi-

bility and consent responsibility. The current Attorney General Eric Holder has served in that office with distinction under very trying circumstances.

For better or worse, the Attorney General often serves as a lightning rod for those in this body with complaints about the administration. And I think it takes special mettle to deal with that kind of constant incoming fire while remaining composed and focused on a constructive and forward-looking agenda.

I am interested in hearing from you about how you plan to carry forward progress on some of the issues that the Department of Justice faces with respect to privacy, collaboration with State and local law enforcement, IT protection, and important civil rights issues such as sentencing reform, voting rights, and racial profiling.

As successful as Attorney General Holder has been, there remains important progress to make and just two years in this administration to make it.

First, if I could, about State and local law enforcement, given my previous experience, I am thrilled that someone with your seasoned and senior experience in law enforcement has been nominated for this position. I serve as Co-Chair, with Senator Roy Blunt, of the Senate Law Enforcement Caucus. And the Department of Justice plays a central role in supporting State and local law enforcement. Can you just comment for me, if confirmed, on the importance you would place on the partnership between Federal, State, and local law enforcement, including such programs as the bulletproof vest program, the justice reinvestment initiative, the violence reduction network, which is particularly important to me, and the information sharing?

And then second, Senator Flake asked about this previously, but could you just talk about the victims of child abuse and programs and comment on what experiences you have had with child advocacy centers and how they function as one of the partnership undertakings between Federal, State, and local law enforcement?

Ms. LYNCH. Certainly, Senator. With respect to the important partnership between the Department of Justice and our State and local law enforcement counterparts, it will be one of my highest priorities to ensure that there is not only collaboration and cooperation, but active and ongoing discussion about the needs that we can help fulfill, but also, Senator, what we can learn from our State and local counterparts.

It has been my experience having had the benefit of frankly learning from some of the best law enforcement agents and police officers around that no one knows the crime problem like the cop on the beat. No one really understands what is going on in a community like the officer who walks those streets every night and knows those residents and understands those issues.

Similarly, our Federal law enforcement agency partners have outstanding background effort and ability to manage complex cases. And when we combine those two, we have been able to achieve tremendous results for victims of violent crime, of terrorism, of cybercrime, along with the cases that you mentioned involving vulnerable victims of child abuse. So certainly I feel that there has to be a collaborative relationship. But I want to essentially assure you that in my view it would be one where we would

not just provide assistance in training and grants. That is very, very important. But we would also listen and learn as well from our local law enforcement partners.

Senator COONS. Well, thank you, that is both a good answer and a great attitude and I look forward to working with you in this area going forward.

The USA PATRIOT Act and in particular its Section 215 authority is often thought of as a spying program, which in some ways it essentially is. But it also is and can be a tool the DOJ and FBI routinely use in the course of domestic law enforcement and its investigative missions. Does the DOJ use Section 215 as a bulk collection tool? And could the Department continue to make effective use of Section 215 if the enhanced privacy protections, the limitations on bulk collection set forth in the USA Freedom Act, were to be adopted?

Ms. LYNCH. Well, Senator, Section 215, as I understand it, is not a bulk collection tool in and of itself but a way in which the Government using court authority can obtain information already gathered that might be useful in ongoing national security investigations.

But certainly I understand that as we work to protect our country from terrorists who seek to attack us here and abroad, that we have to be mindful of our civil liberties and the privacy rights of anyone who may be impacted by our collection procedures. And certainly I look forward to, as the renewal of Section 215 comes up, I look forward to discussions with you and the other Members of this Committee about the best way in which to keep that useful tool and also reassure this body and the American people that it is being used in the most effective way.

Senator COONS. I am also concerned about IP—intellectual property protections as we talked about previously, and trade secrets.

Ms. LYNCH. Yes.

Senator COONS. My understanding is several other Senators have also asked about this issue. So I will try to be brief. I am concerned about the huge transfer of wealth going on through trade secret theft and the Federal crime under the Economic Espionage Act is estimated to be responsible for up to \$500 billion annually in terms of losses to the United States, yet there is only one or two cases a month federally brought by prosecutors.

As the U.S. Attorney for the Eastern District, what has been your experience in investigating or prosecuting trade secret theft? And would you be interested in working together to strengthen the resources and strengthen the legal authorities for protecting America and our inventions and innovations and ensuring that we stem the tide of loss through trade secret theft?

Ms. LYNCH. Certainly, Senator. In my experience as the U.S. Attorney for the Eastern District of New York, I do not believe we have any specific indictments under the Trade Secrets Act. We do, however, have a number of cases where we have intercepted foreign actors trying to obtain U.S. information and we have prosecuted them under other statutes. So we deal with very, very similar issues.

I will note that these cases tend to be complex and long term. They do require an investment of resources, the devotion of time

on the part of prosecutors, but also technological resources on the part of our law enforcement agencies. So I would look forward to, should I be confirmed, working with you and this Committee to ensure that we have the appropriate resources we need to handle these cases.

Senator COONS. Well, as a Member of the Appropriations Subcommittee responsible, I look forward to working with you on that. I think it is vital that we strengthen the protections for America's inventions and inventors.

Let me last ask about criminal justice reform, an issue that I think is front and center and important for our country and for our justice system.

We have seen in a number of ways in the last year that our criminal justice system is broken in terms of how it deals with mass incarceration and its impact, in particular, on drug offenders and on the African-American population of our country.

It is not just a civil rights problem, but also a fiscal problem and a social problem. And if you look at the numbers of who is incarcerated and for how long and under what charges, I think there is a significant inequality that needs to be addressed.

I think we need legislation through this Committee and in this body that will help rationalize mandatory, overly long drug sentences for non-violent offenders.

Attorney General Holder took an important step forward 2 years ago when he issued revised guidance to the field directing that prosecutors not automatically charge the most serious mandatory minimum triggering levels of drug possession against low-level, non-violent offenders. I wondered whether it is your intention to keep in place Attorney General Holder's 2013 memorandum or whether you would look for other or additional ways within the law, within the Constitution, to promote the equal and just application of our criminal laws to every person regardless of background, of sex, of gender, of sexual orientation, race, religion and nationality.

Ms. LYNCH. Senator, you touch on the important issue of making sure that our criminal justice system protects the American people, but does so in a way that is fair and effective and also protects the individual rights of everyone who has to pass through it.

It is the responsibility of a prosecutor not just to win convictions, but to bring justice to every case, no matter what the result.

Certainly, with respect to Smart on Crime, I have found it similar to many ways in which my own district has had to manage an ever-increasing problem of narcotics prosecutions of low-level offenders and work with an ever-growing docket of larger narcotics cases, also, and I found it to be a reasonable approach to do so and look forward to continuing that particular initiative.

But I also look forward to further discussions with you and your colleagues on these issues as to how we can ensure that our criminal justice system is effective and yet also protects the people who have to go through it.

That is the dual responsibility of the prosecutor. It is one that I have taken seriously all of my professional career and, should I be confirmed as Attorney General, I look forward to working with you as we explore that issue together.

Senator COONS. Thank you, Ms. Lynch. As he said at the outset, Senator Leahy remarked that nearly a third of the Department's budget at this point is dedicated to the Bureau of Prisons.

I think we have a pressing civil rights issue nationally for us in terms of our criminal justice system, but I have also long been a supporter of law enforcement and believe that you are uniquely positioned, qualified, and prepared to help us balance these twin obligations of ensuring that our communities are safer and stronger and ensuring that our justice system delivers on justice.

Thank you.

Ms. LYNCH. Thank you, Senator.

Senator PERDUE [presiding]. U.S. Attorney, this is David Perdue. We met the other day.

Ms. LYNCH. Yes.

Senator PERDUE. I am a Senator from Georgia.

Ms. LYNCH. Yes. Thank you for your time.

Senator PERDUE. I want to thank you for your perseverance and patience with us today. I hope it was not anything that I said that cleared the room for you.

[Laughter.]

Senator PERDUE. I hope you are doing well.

Ms. LYNCH. I hope it was not anything I said.

[Laughter.]

Senator PERDUE. Well, thank you so much for, again, your perseverance. I just want to join my colleagues and welcome you before the Judiciary Committee and also to thank you for your years of public service.

As we talked the other day, I am very impressed with your career and want to thank you for upholding the law in your career.

I congratulate you on this nomination. You spoke this morning about your oath and the required commitment to the Constitution. I applaud that. You have demonstrated that in your career.

You were just talking about mandatory minimums, if I am correct. I just have a quick question. Relative to a case that you had in your jurisdiction recently, I want to ask about a defendant who was convicted by your office in the late 1990s. His name was Francois Holloway, I believe. I hope you remember him.

There was a lot of press coverage on this case during your current tenure as U.S. Attorney.

In 1995, Mr. Holloway rejected a 10-year plea and was convicted after a trial on three counts of armed carjacking and possessing a gun during a violent crime. Those offenses subjected him to consecutive mandatory minimum sentences and he received a total of, I think, 57 years.

In 2013, Judge Gleeson, the District Judge in Brooklyn who sentenced Mr. Holloway, began what The New York Times called a campaign on Mr. Holloway's behalf and wrote to you asking that you consent to an order vacating two of Mr. Holloway's convictions for armed carjacking.

No one argued that Holloway was innocent or that he was wrongfully convicted or that his sentence was unlawful. No one claimed that there was a problem with the trial. All of Mr. Holloway's appeals were rejected.

The case went to the Supreme Court which upheld the convictions. In fact, everyone agreed that the sentence he received was lawful under Title 18 of the sentencing guidelines.

Judge Gleeson did not agree with the sentence the law required him to impose and was asking you to help him reduce it.

In February 2013, to your credit, you refused to vacate the carjacking convictions. You suggested to Judge Gleeson that Mr. Holloway could contact the Office of the Pardon Attorney and submit a petition for commutation of his sentence.

I personally think that that was the appropriate response. I congratulate you on that. I think every prosecutor would have responded that way.

In May of 2014, however, Judge Gleeson again urged you to vacate two of Mr. Holloway's armed carjacking convictions. He said your suggestion that Mr. Holloway seek clemency was not a realistic avenue of relief because the fact that Holloway committed crimes of violence will disqualify him.

The judge was definitely a passionate advocate for this defendant. This time, however, you backed down and you consented to the judge's order to vacate the carjacking convictions.

I want to note that he was a violent offender; along with an accomplice, stole three cars at gunpoint.

As the top law enforcement officer, I have a couple of questions relative to that case and your prospective tenure as Attorney General.

My first question is, what caused you to change your earlier position in that case?

Ms. LYNCH. Senator, with respect to the *Holloway* case, it was a matter that had been of longstanding—it was a longstanding case from the office. It did predate my tenure my first time as U.S.—my second time, but not my first time as U.S. Attorney, I should say. And it was a case in which it was the defendant who had made a motion to allow the judge to revisit his sentence.

So there was, in fact, a judicial proceeding before the court at that time and the court wanted us to take a second look at it. We did consider it numerous times.

Ultimately, the matter was before the court and while the judge indicated he would like to have the opportunity to review that, our view was that we had to look at the case consistent with many of the initiatives that were being put in place now by the Department of Justice certainly with respect to clemency and with respect to how we look at offenders who have served a significant time and whether or not they would be eligible for that.

Of note to me as I reviewed the matter was that Mr. Holloway was the second person in that carjacking incident and, in fact, was not the individual with the gun, but was, of course, legally liable for that. And while he received the sentence of 57 years, shall we say the main actor in that received a sentence shortly under 2 years.

So there was an incredible disparity in the sentence there. But the real issue for us, was there a legal proceeding in place, and there was, and essentially, did we have the ability to let the judge review the sentence again by keeping it in the court system, and we felt that we did.

But before we did that, it was important to me to consult with every victim in that case and certainly we found all of the victims but one after extensive research, all the victims who also felt that the judge should have the opportunity to reconsider Mr. Holloway's sentence, without a guarantee of what that sentence would be.

Based on that information, based upon Mr. Holloway's record in prison, based upon his role in the offense, we looked at how we would have handled the case under current times. And, again, given that there was a court proceeding, we were able to go to court and tell the judge that we would not stand in the way of him reviewing the sentence again, which Judge Gleeson did.

Mr. Holloway was re-sentenced. He then went into State custody to finish a matter and so I do not know his current status. But we did essentially allow the judge to take another look at that and through the judicial process the judge imposed a different sentence.

That sentence was still significant and it was still, I would say, twice as long as what Mr. Holloway would have gotten had he accepted a plea deal.

Senator PERDUE. Thank you. As the Attorney General, you will have great discretion, just as you did as District Attorney, and the question I would—as illustrated by that case, I think—is where do you draw the line? How do you see this balance between the law and your personal position in a case, your personal opinion in a case?

Ms. LYNCH. Senator, I do not believe that my personal opinion is the governing factor in a case, be it Mr. Holloway's case or be it any case in which I would review, either as U.S. Attorney now or should I be confirmed as Attorney General.

I will take a look at every case and I will commit to you that I will review every matter brought to me with a full and fair examination of the facts and an application of the law, but also with a view towards, as in Mr. Holloway's case, whether or not there is a judicial proceeding there and the current status of that.

But we will take every effort and I will make every effort, should I be confirmed, to always act consistent with the law.

Senator PERDUE. Thank you. Just one last question in this vein. There are probably hundreds, if not thousands of violent offenders in our Federal custody who are serving sentences based on consecutive mandatory minimums that you just spoke about, like those imposed on Mr. Holloway.

If you are confirmed and during your tenure as Attorney General it comes to your attention there are cases like Mr. Holloway's, would you consent to early release of those offenders?

Ms. LYNCH. Senator, it would not be my place to consent to an early release nor was it our place in the Eastern District of New York in the *Holloway* case.

Our posture was to consent to allow the judge to revisit the sentence and impose the sentence that, as a judicial officer, he felt appropriate.

So as U.S. Attorney, I would not be making the decisions as to whether someone should literally be released. Should I be confirmed as Attorney General, I would not be making those decisions either, except as people go through the clemency process or the

pardon office and those matters come under review by the Department of Justice.

We would then apply our best judgment to the situation, but ultimately, the ultimate decision on release would not be made, I believe, by me.

Senator PERDUE. Well, since I am the only one up here, I guess I am the presiding officer.

[Laughter.]

Senator PERDUE. My time is almost up, but I have just one other question for you. I would like to move on to national security, if I might.

And I will remind the Chairman that I did not go over on my allotted time, just in case.

The DOJ announced last week that two Yemeni nationals charged with conspiring to murder American citizens abroad and providing material support to Al-Qaeda will be prosecuted by your office in the Eastern District of New York.

I would like to ask you about your views on transferring terrorists to U.S. soil who have been captured abroad. Terrorists have been tried successfully in civilian courts before, but I would like to know your opinion about what role you think military tribunals play in handling terrorism cases.

Is there any role for military tribunals or should civilian courts be used exclusively for these prosecutions, in your opinion?

Ms. LYNCH. Senator, thank you for that question. The case that you mention is being handled by my office. And at the outset, I would note that throughout the process of reviewing that case and deciding how to best prosecute it and where to appropriately venue it, we consulted extensively with the Office of Military Commissions, as we do with all of the cases involving national security defendants who may be brought to U.S. shores and may be brought to the Eastern District of New York.

Certainly, I would say at the outset that my position is if terrorists threaten Americans here or abroad, they will face American justice. We have done that successfully in the Eastern District of New York and I look forward, should I be confirmed as Attorney General, to continuing that strong practice, utilizing all of the tools in our arsenal, and that includes the military commission process.

Essentially, Senator, should I be confirmed as Attorney General, I look forward to working with the military and the other executive branch divisions in Government to make the best determination about where each case should be brought.

Should that determination be an Article III Court, I anticipate that the receiving U.S. Attorney's Office would handle it with the skill and dedication that my prosecutors do every day.

Similarly, should it be a military commission, they will also handle it with the skill and dedication that they have also shown.

I have been honored to have hosted General Martins on more than one occasion in my office and have a positive relationship with him and, should I be confirmed as Attorney General, look forward to continuing that relationship with him and all of our partners in the war on terror.

Senator PERDUE. Well, I would like to thank you for your patience, perseverance, professionalism, and your graciousness today. You have run out of Senators almost.

Ms. LYNCH. I seem to have.

[Laughter.]

Senator PERDUE. In the absence of our Chair, there is only one other Senator I think that is potentially available for questioning. I know that they are on the floor right now voting. I ran over to get a few questions in.

So what I would suggest is that we take a 10-minute recess, if you are amenable, and we will find from the Chairman if Senator Tillis is the last remaining person to ask questions, and we will see where we go from there.

So I think we will stand in recess for 10 minutes, and thank you again for your graciousness and perseverance today.

Ms. LYNCH. Thank you, Senator.

Senator PERDUE. Thank you.

[Whereupon, at 2:55 p.m. the Committee was recessed.]

[Whereupon, at 3:13 p.m., the Committee reconvened.]

Chairman GRASSLEY. Just as soon as the room quiets, I am going to recognize Senator Tillis. I think it is quiet enough.

Senator Tillis, would you proceed?

Senator TILLIS. Thank you, Mr. Chair.

Ms. Lynch, congratulations. It is quite an honor to be in the place that you are today. I want to compliment you on your distinguished career.

I have also noted over the course of your testimony just how much pride is in the eyes of your friends and supporters here. So, congratulations.

I had a question for you and it stems from—I also want to thank you for dealing with last week when we had to move the venue and the time around for the meeting. I appreciate your graciousness and spending some time with me last week.

And I really want to maybe start where we left off with some of the discussions and I think that Senator Flake and Senator Lee and Senator Schumer have also echoed the concerns about the limited resources and how you would prioritize things within your future prospective new responsibilities.

I guess something that strikes home for me has to do with certain elections laws. In North Carolina—I do not know how familiar you are with some of the elections laws that have been passed over the past couple of years, but in the context of at least one case that was brought against the State of North Carolina by Mr. Holder, where the law was—more or less, the foundation of that law was the Indiana law which has been upheld by the Supreme Court 6–3.

Given the limited resources within the AG's Office and the Department of Justice, what are your thoughts on pursuing laws that are likely to end up in the same state, particularly laws like North Carolina that went much further than the Indiana law that was upheld?

Ms. LYNCH. Certainly, sir. I believe that the right to vote obviously is the cornerstone of our democracy.

Senator TILLIS. As do I.

Ms. LYNCH. And certainly I think that States obviously have an interest in protecting that right to vote, also, as well as regulating it and making it safe and free and open for everyone, and I believe many States are acting with exactly that view in mind.

Certainly with respect to the North Carolina statute and case, I know that it is under litigation now. I believe there will be a trial at some point in time. I am not familiar with the status of the case now.

So I cannot comment on that specific case or that specific statute, but what I can say is that with respect to how the Department will look at voting rights issues is with a view toward protecting the right to vote and hopefully working with the States to ensure that all the interests are met.

Certainly all voter ID laws are not problematic. As you have noted, the Court has outlined situations in which they are useful and serve a fundamentally important purpose, and the Department has, under the previously utilized doctrine of preclearance, actually approved voter ID laws.

So I do not think that we can at this point, without knowing how a case will be presented, say which way the Department will go in viewing it. But given the fundamental importance of the right to vote, should an issue be raised?

It is something that the Department of Justice has an obligation to review and consider whether or not it should get involved.

Senator TILLIS. In the example of the law that was passed by North Carolina and the case that was brought against North Carolina—in fact, I was named in the case because at the time I was Speaker of the House. I am just curious how, as you go forward and you are dealing with the challenges in this office of, as I believe Senator Schumer said, trying to focus your resources on the bad actors, the hardened criminals, the difficult challenges that the Department faces, in a case that has some 10 attorneys on it focused on—no less than 10, I believe—focused on that, I would hope that there would be some focus on: Is that the best and highest use if, given the merits of the case and other laws that have gone to the Supreme Court, that it is likely to end in a situation where it is going to rule in favor of the State and at the expense of those resources that could be used for other purposes.

What is your thought on going into this role and taking a look at cases like that and maybe determining priorities based on the likely outcome? Have you given any thought to that?

Ms. LYNCH. Certainly, Senator, as we review a case, both throughout my career as a prosecutor and as U.S. Attorney, we always look to the possibility of how a court will view a particular matter.

But first and foremost, whether the case involves voting or any other important right, is the issue of what is the evidence that is presented and what is the relevant law, what is the interest being protected. And if it relates to a core function of the Department of Justice, such as protecting the rights of citizens, keeping our citizens safe, or protecting the right to vote, it is a matter that we would be obligated to look into.

Whether or not a matter would result in litigation would, of course, depend upon a variety of factors, which are not in front of

me today, about the nature of the law and how it was written and essentially whether it comported with those laws that were previously approved both by the Department and by courts.

Certainly, with respect to the North Carolina case, I believe the matter is in litigation. It is not something that I am intimately familiar with. I have not been involved in the management of that case to date. I look forward to learning more about it, should I be confirmed, and I believe the matter will proceed to court and we will await the results there.

Senator TILLIS. Ms. Lynch, I do have a question just based on the final comment that you made there with respect to the case, because it gives me some sense of whether or not we can look at this objectively and make sure that we are using the resources of DOJ in the most effective way.

I think in January of 2014, you said that people try and take over the Statehouse and reverse the goals that have been made in voting in this country. I presume since I was the person that took over the Statehouse, I would be included by reference.

And you go on to say, "And in my home State of North Carolina, has brought lawsuits against those voting rights changes to seek to limit our ability to stand up and exercise our rights as citizens."

So in my limited time—I know that I will have another opportunity to ask questions—I had some sense that maybe perhaps you were somewhat familiar with what had been done in North Carolina. And again, with the backdrop of other laws that seem to have disposed of whether or not what North Carolina has done, I took great care to make sure that we made heroic efforts to preserve everyone's right to vote.

I may come back around and ask you a few more questions to this effect, but I want to move on to something that is completely out of there and it has to do with something that is very important to me. One of the reasons I ran was on veterans' issues and on taking care of those who have taken care of us.

One question that I have—I hope that you will look at and perhaps consider in my follow-up questions giving me a response, if you have time to speak with others, but the Public Safety Officers' Benefits program is a problem.

We have people who are making claims there who are not getting their claims resolved on a timely basis and I have heard a number of reports where—and this is in the event of a death—that I would like to think that we would place a priority on resolving these claims and clearing the backlog.

If you have an opportunity, and you will not have a lot because you will be sitting right there, but if I could get some sense of what that will be as a priority, if you are confirmed as Attorney General.

It is something personally important to me. I think it is the least we can do for the families.

The one other thing I will tell you that I think we are going to find a lot of common ground, should you be confirmed, is on the issue of cybersecurity. I consider this to be something that the Attorney General, all law enforcement, all prosecutorial districts across this Nation need the tools to make sure that we get control of this quickly.

I would like some idea, based on your knowledge of how we are currently doing, if you have any sense of where you would go as a priority, should you be confirmed.

Ms. LYNCH. Certainly, Senator. With respect to cybersecurity, there are a number of areas which would be my focus, should I become confirmed as Attorney General.

Within our law enforcement community, I would work to ensure that they have the technological resources needed to stay ahead of this threat both from a human resources perspective, as well as computers and the like.

With respect to the U.S. Attorney community and the Department of Justice community, I would make sure that our prosecutors receive the appropriate training to manage this important issue.

As I have seen in my practice as U.S. Attorney, cyberissues are now in every area of practice that we have. That will continue to be the case and I am sure that, should I become confirmed as Attorney General, I will see that throughout the Department of Justice.

So I will work to strengthen the resources in the Criminal Division and the National Security Division that deal with these cases.

But, Senator, another thing that I think is very important as we combat cyberattacks and deal with cybersecurity is the relationship between Government and private industry.

I believe that there is a very, very important collaborative relationship to be built there. It is being built. I have seen it. I have participated in conferences with both financial sector parties, as well as pharmaceutical industry parties on this important issue and we have had very, very good, positive, collaborative results involving the reporting of cyberattacks, as well as law enforcement's ability to work with private industry to gain knowledge of their systems to prevent attacks, as well.

So I think we also—should I become Attorney General, one of my priorities would be strengthening this connection between Government and private industry, as well.

Senator TILLIS. Thank you very much.

Senator Schumer mentioned earlier—I meant to mention in my opening comments, that we have a number of very capable basketball teams in North Carolina beyond the Blue Devils and the Tar Heels, many of whom I think this year could beat the Knicks.

[Laughter.]

Ms. LYNCH. Well, Senator, as an early Carolina fan, I have to say that that is likely true.

[Laughter.]

Chairman GRASSLEY. I would like to have the various staff of both Republican and Democrat give us some inventory of the number of people that want a second round, and the second round will be 8 minutes. I am going to take about 5 minutes of that 8 minutes and then go vote and I will have to recess if nobody else is back here. So you can do what you want to do during that period of time.

Ms. LYNCH. Thank you, Senator.

Chairman GRASSLEY. The first question was going to be a question. Now it is just going to be a statement. So I would appreciate it if you would listen to my point of view.

You suggested earlier that prosecutorial discretion allows the administration to prioritize removal of criminal aliens from the country. Yet, in fiscal year 2013, the administration released from its custody 36,000 aliens who had been convicted of a crime instead of removing them. According to the Department of Homeland Security, 1,000 of these aliens have already been convicted of another crime since their release.

Just today I received a 38-page document from the Department of Homeland Security that lists each of the offenses underlying those 1,000 post-release convictions, including things like assault with a deadly weapon, terrorist threats, failure to register as a sex offender, lewd acts with child under 14, aggravated assaults, robbery, hit and run, criminal street gang, rape spouse by force, child cruelty, possible injury, death.

So I am going to put this in the record.

[The information appears as a submission for the record.]

Chairman GRASSLEY. So my statement is this for you to consider. You do not have to respond to it now. I could go on, but for the sake of time, that copy is in the record, so anybody can review it.

This suggests the administration is not prioritizing the removal of criminal aliens very well. So 1,000 out of 36,000 have committed further crimes, and, who knows, maybe others.

So, if confirmed, my statement to you would be simply: You need to take a look at that policy.

I had two points in my second question. But Senator Tillis asked about the public safety officers' benefits. So he has heard the same thing that I have heard from my constituents. In Iowa alone, there are three families who have been waiting for over three years, and another that has been waiting since 2013 to receive benefits.

Two weeks ago, I wrote the Department about the delays and requested a reply by this Friday. Obviously, you will not be in a position that you can request that or answer that by Friday, but I hope to get an answer because way back in 2004 the Attorney General at that time made a decision that these claims should be processed within 90 days of receiving all the necessary information. So then I would go to the second one, which is just—well, let me go to it and then I will ask you the question.

There is a Brandon Ellingson of Iowa. You would not know about this because it is an Iowa person, and a college student, who drowned while handcuffed in the custody of Missouri State troopers after they arrested him on Lake of the Ozarks, May 2014.

I have discussed the case with Attorney General Holder, had a couple of telephone conversations. I am very satisfied with his personally looking at it. It has gotten his personal attention. He has assured me that the Department will look into the unanswered questions in this case carefully to see if there are any Federal laws involved.

So all I am asking you to do, if and when you are approved, will you be able to talk to Attorney General Holder and if he does not make a decision by then, that you would personally examine Brandon Ellingson's case?

Ms. LYNCH. I will certainly continue that resolve, Senator.

Chairman GRASSLEY. Thank you. Now, I am going to go and I will recess for a while, then I will come back and finish my second round. Thank you.

Ms. LYNCH. Thank you, Senator.

[Whereupon, at 3:30 p.m., the Committee was recessed.]

[Whereupon, at 3:33 p.m., the Committee reconvened.]

Senator SESSIONS [presiding]. Thank you all. Sorry that we are in this unfortunate circumstance of having our hearing interrupted rather repeatedly. It is not the best way to do business. Ms. Lynch, I am sorry that that has occurred. We have been working hard in the Senate. Thursday, more votes were cast in one day than in the entire year last year.

Senator McConnell promised that Members would be able to offer votes, so there are 18 more, I think, going to be cast today. Maybe that will come close to bringing an end to the legislation that is out there.

But I think it is part of our heritage as a Congress to have individual Senators be able to offer an amendment and then vote on it. So I think it is the right thing. This hearing, I wish, could have been conducted more respectfully, so I am sorry about that.

I have to have a clear answer to this question, Ms. Lynch: Do you believe the Executive action announced by President Obama on November 20 is legal and constitutional, just yes or no?

Ms. LYNCH. As I have read the opinion, I do believe it is, Senator.

Senator SESSIONS. Well, this is very troubling to me because it goes way beyond prosecutorial discretion, I think. It goes clearly to allowing someone to work who is unlawfully in America, to take jobs that the statutes say they are not entitled to take. It gives people the right to participate in Social Security and gives them a number and is part of their work authorization and to participate in other actions, like Medicare.

I believe this is a fundamental question. It has been a part of the national debate and the American people are very concerned about it. The polling number is very high. They do not believe—in fact, the American people are shocked that we are seeing this action from the President after Congress was asked to pass legislation to this effect and Congress rejected it.

Do you believe that the President has a right to take action in violation of law just because Congress refused to pass a law he asked them to pass?

Ms. LYNCH. I believe, Senator, that the President is as limited by law as every citizen and it is certainly the responsibility of both the President and the Department of Justice to follow the laws as passed by this body.

With respect to other actions the President may take, depending upon the action taken, there may be a basis for certain actions or there may not be a basis for legal actions. And that is where I believe that the Department of Justice must apply its own independent, thorough legal analysis and, as with this particular opinion, ascertain whether or not there was a legal framework for some action and, as I saw in the opinion, indicate that there was not a

legal framework for some of the action that was requested and decline to provide a legal basis for that.

Senator SESSIONS. Well, what it did approve, I think, clearly goes beyond the law. Congress authorized—has passed certain laws that control entry into the United States. We expect you as the chief law enforcement officer, the President, who takes an oath to see that laws are faithfully executed, to execute those. I have read the opinion and it suggests that “faithfully execute” means you use your resources as best you have to carry out the intent of Congress. Is that fundamentally—

Ms. LYNCH. Certainly, sir.

Senator SESSIONS. So it goes beyond just enforcing every single law. If you do not have the resources, you should try to use the resources you have to effectively carry out the law.

Ms. LYNCH. Certainly, sir.

Senator SESSIONS. Well, what I would contend is absolutely plain. I would contend that you have gone far beyond that. You have actually created a new system of law, a new system of qualification, a new standard for who can work in America, a new standard for who can have Social Security and Medicare. This is a fundamental matter of great importance. I have just got to tell you, I am worried about it.

In the Wall Street Journal, Mr. Rivkin, who served two White House counsels, and law Professor Foley concluded their piece this way: “The OLC,” that is the Office of Legal Counsel who reports to Mr. Holder and would report to you, that you are now affirming, rendered a valid opinion, which you associate yourself with. This is what they said: “The OLC’s memo endorses a view of presidential power that has never been advanced by even the boldest presidential advocates. If this view holds, future Presidents can unilaterally gut tax, environmental, labor or securities laws by enforcing only those portions with which they agree. This is a dangerous precedent that cannot be allowed to stand.”

Frankly, the Attorney General of the United States should have told President Obama that, urged him to back off. Presidents get headstrong. He did not do it, and now you are here defending this. I believe it is indefensible.

So, I am worried. I just want to tell you, that is a big, big problem with me.

Now, do you believe and do you support legalization of marijuana?

Ms. LYNCH. Senator, I do not.

Senator SESSIONS. I know the head of the DEA, who is a little bit out of step with some in the administration, I think, agreed with you on that. The President said this in January of last year: “I smoked pot as a kid and I view it as a bad habit and a vice, not very different from the cigarettes I smoked as a young person up through a big chunk of my adult life. I don’t think it is more dangerous than alcohol.” Do you agree with that?

Ms. LYNCH. Well, Senator, I certainly do not hold that view and do not agree with that view of marijuana as a substance. I certainly think that the President was speaking from his personal experience and personal opinion, neither of which I am able to share. But I can tell you that not only do I not support legalization of

marijuana, it is not the position of the Department of Justice currently to support the legalization, nor would it be the position should I become confirmed as Attorney General.

Senator SESSIONS. I do think there has been a lot of silence there. I know the head of the DEA did push back and testified here pretty aggressively, but I think she felt like she was out of step within the administration. I hope that you will cease to be silent because if the law enforcement officers do not do this, I do not know who will. In the past, Attorneys General and other Government officials have spoken out and, I think, kept bad decisions from being made.

It is good to see Senator Leahy here. How many Attorneys General have you presided over? More than a few. How about a rough number?

Senator LEAHY. Since President Ford's—go back to there. Not presided, but been part of it.

Senator SESSIONS. Well, it has been a pleasure to work with you on this Committee over a number of years.

Ms. Lynch, this is a big issue, this immigration, because it represents, in my view, a presidential brute decision that was rejected in Congress. I do not believe, and totally reject the idea that if Congress fails to act, then the President is entitled to act, any more than I think if Congress fails to act, judges can just act. Because Congress, by not agreeing to pass a certain piece of legislation, has acted. It has made a decision. That is where we are. There are still opportunities and still legislation moving that will be considered in the years to come on all questions relating to immigration. There will be a lot of debate and that kind of thing. But under our system, it is not justified, in my view.

Just one more thing I would say to you. I do hear a lot of talk, a lot of loss of confidence in the Justice Department, a belief from professionals, prosecutors, and citizens that there is too much politics and not enough law.

I do think, if you achieve this office, you need to know that. I shared that with you, I think, in our meeting. You need to make it a central part of what you do to reverse that trend and restore confidence that this Attorney General's Office serves the law and the people objectively and not a political agenda.

Thank you. I will recognize Senator Leahy.

Senator LEAHY. I will be brief. But when I was a young law student I was invited in to the Attorney General's Office. He was recruiting me to come to the Department of Justice. I asked the Attorney General how independent they were.

I said, for example, suppose you had a prosecution that you knew was justified, but the White House, you know, might take a different view? He said, I would have to prosecute because that is my job. That Attorney General was Robert Kennedy. He later prosecuted a man who was critical to his brother getting elected President.

I contrast that to another Attorney General in the last administration who testified here that he's a member of the President's staff, so therefore in effect took orders from the White House. I kind of exploded on that. I said it is not the Secretary of Justice,

it is the Attorney General of the United States—not for the Republicans, not for the Democrats, but the United States.

I think from what you told us, you would be that kind of an independent Attorney General. I also heard somebody criticize here this morning on the prosecution of Ted Stevens. I happen to feel he should not have been prosecuted. They neglected to mention that the conviction was during the last administration and it was Attorney General Holder who got it removed from Senator Stevens.

We are concerned in Vermont about the increase of opiates and heroin. I assume from things you said before that you would continue to work with communities, as the Justice Department does now. I mean, communities, not just at the Federal level, but the State and local level, to combat this problem that is facing so many parts of the United States, not just my own State of Vermont.

Ms. LYNCH. Senator, should I be confirmed as Attorney General, certainly the issue of the growing numbers and amount of heroin abuse is a grave concern to me. I have seen it happen in my own district. In talking with my colleagues in the U.S. Attorney community across the country, they have expressed similar concerns.

As you point out, however, we are most effective when we work in partnership with our State and local law enforcement partners, and often when dealing with the issue of opioid addictions and working with our public health community as well, to find treatment for the offenders and possibly break the cycle of addiction.

Many of my colleagues have in fact been engaged in efforts of exactly that type that have been very effective in lowering the addiction rates and, in fact, lowering the crime rate associated with heroin abuse.

These are efforts that we can study and that we can share. We have to have a strong law enforcement response also but we must involve State and local counterparts. We must involve families, we must involve treatment centers as well in dealing with this seemingly intractable problem.

Senator LEAHY. Thank you. I would, if there is no objection, reserve the 4 minutes and 46 seconds left in my round of questions because, as everybody knows, the roll call has started.

Senator SESSIONS. That will be fine. We will save that 4 minutes and 46 seconds and we will stand in recess until somebody returns.

Ms. LYNCH. Thank you, sir.

[Whereupon, at 3:47 p.m. the Committee was recessed.]

[Whereupon, at 3:54 p.m., the Committee reconvened.]

Senator SCHUMER [presiding]. The hearing will come to order.

First, I would like to thank my Republican colleagues for the courtesy here. We are all going back and forth, voting. It would be rare to have the third-ranking Democrat chair the Committee, but we are all going and voting and I appreciate that. I will try to be as quick as I can because of my need to vote.

So first, Ms. Lynch, I read this morning that—on the news—you have something special from your late brother, who was a Navy SEAL, with you today. Tell us a little about that.

Ms. LYNCH. Well, Senator, I have with me my late brother's trident, the insignia of the Navy SEAL. It is something that I usually have with me in my office, but I often bring with me when I come down to the Department of Justice and I had it with me here

today. It ensures that I have both of my brothers with me here today.

Senator SCHUMER. Yes. Well, having read and seen and met the SEALs, it is an amazingly difficult thing to achieve.

Then like you, in a different way, he was defending our country in one of the best ways you can, so we really appreciate that and appreciate your thoughts about your brother. Okay.

Now, I would like to go to the next area. This morning, both you and Senator Sessions and I talked about a topic, it seems like a long time ago this morning. So I would like to just talk a little more about that.

Absent appropriate authorization from DHS, I just want to ask, is there any Federal right for an immigrant who is not in lawful status to work?

Ms. LYNCH. No, there is not, to my knowledge.

Senator SCHUMER. Okay. Thanks. I think earlier you said you had a preference that all individuals here in the United States work, regardless of status. I think a lot of us would share that preference. I think this is confusing for people because there literally are nearly 100 categories of statuses, of stati, whatever the right word is—

[Laughter].

Senator SCHUMER. They did not teach that at James Madison High School—for people because you have got to count green cards, non-immigrant visas, spouses of individuals on certain visas, parole, asylum, applicants for green cards, non-immigrant visas, immigration visas. Many people who are not U.S. citizens have a legal right to work. For example, green card holders' work visas. We admit people to work on a work visa.

So let me ask you, just what did you mean when you said you think everyone should work regardless of status?

Ms. LYNCH. Well, certainly, Senator, when I made that comment I was really making more of a personal observation.

I must admit, I have to be careful here because my father is here and my mother is watching. But certainly in my family, as we grew up, we were all expected to try and find employment as part of becoming a responsible adult and as part of becoming a responsible member of society. So I was making a personal observation based on the work ethic that has been passed down to me by my family, not a legal observation.

Senator SCHUMER. Right. So again, to reiterate, you do not believe that there is a Federal right for an immigrant who is not lawful here to work?

Ms. LYNCH. No, sir. Not at all.

Senator SCHUMER. Okay. I just wanted to clarify that. I wish Senator Sessions were here. He was not certain about what you said. I think now the record is 100 percent clear. Okay.

One final question. This is about a myth—another of the myths that are out there—a generally deferred action policy eliminates case-by-case consideration and is therefore illegal. That is what some people are saying.

Deferred action actually, like many Federal policies, sets eligibility criteria but then requires case-by-case consideration. So only a limited set of individuals, those with deep ties to this country and

without a criminal record, can apply for deferred action under the President's proposal.

But that is not all. After they register, pay a fee, undergo criminal background and national security checks, the President requires DHS officers to scrutinize every single case individually to make absolutely sure the person is not someone we should prioritize for deportation.

So I have two questions in regard to that. Doesn't it make eminent sense for a program to set out guidelines at the front end and then still require careful individual consideration at the back end before anyone is approved?

Ms. LYNCH. Certainly, sir. That would make eminent sense and would provide for a careful review of every applicant.

Senator SCHUMER. And I believe that is what the President is intending to do. We have not seen all the regulations yet, but that seems to me what he said.

Couldn't one argue that other discretionary guidelines and programs like Federal contract bids take a similar approach? We lay out broad criteria, but then they review each contract, contract-by-contract.

Ms. LYNCH. Contract-by-contract and with vigorous application and screening.

Senator SCHUMER. Right. Okay. I want to thank, again, my colleagues for deferring. I will pass not only the questioning, but the gavel, to Senator Graham.

Senator GRAHAM [presiding]. A dream come true.

[Laughter].

Senator GRAHAM. It will only last for eight minutes, so I am going to enjoy it while I can.

Your brother was a Navy SEAL. That has got to be—that is a major accomplishment. It is probably the hardest thing to be in all the military, so I know your family is proud of him and what you have accomplished.

Do you agree with me that one of the worst possible outcomes is for the United States to release somebody from Guantanamo Bay to go back to the fight to kill an American SEAL, or anyone else? That we should really make sure we do not do that unless we absolutely have to?

Ms. LYNCH. I certainly think that anyone coming from either Guantanamo Bay or any of our facilities, we should take appropriate steps to make certain they do not place Americans in harm's way.

Senator GRAHAM. I could not agree with you more.

We have got a 30 percent release rate, and from a SEAL point of view, they are usually the guys capturing these folks.

It has got to be bad for morale if one of the guys that you captured wind up killing your buddy down the road. So I really do believe that the policy we have at Guantanamo Bay needs to be reviewed, and reviewed closely for not just all SEALs, but for all who have been fighting.

Now, about being at war. Do you believe we are at war?

Ms. LYNCH. We are at war, Senator.

Senator GRAHAM. Okay. Now, I have been a military lawyer for 30-something years. You have been a prosecutor for a very long

time. I believe in an all-of-the-above approach, that military commissions have a place in this war and Article III Courts have a place in this war. Do you agree with that?

Ms. LYNCH. I do, Senator. I do agree with that, by principle.

Senator GRAHAM. Now, under military law the main objective when you capture an enemy combatant is to gather intelligence, it is not prosecution. Does that make sense to you?

Ms. LYNCH. That is certainly one of the important objectives under military law. I would add, however, though, that with respect to the Article III prosecutions that I have been involved in through my office, a primary goal is also to obtain cooperation, and thereby valuable intelligence.

Senator GRAHAM. Here is what I would suggest to you, ma'am. This is the Army Field Manual. It is over 300 pages. I helped write the Detainee Treatment Act with Senator McCain to make sure that we did not torture people. I believe waterboarding is torture and it is illegal. But in this Army Field Manual, which sets the parameters for detaining people and interrogating them, not one time does it suggest that you should read the enemy combatant their Miranda rights. Do you know why that would be?

Ms. LYNCH. Well, I certainly think the Army Field Manual has proven to be a very effective way of handling high-target detainees.

Senator GRAHAM. All I would suggest, ma'am, that anybody in the military would reject out of hand that it is a good way to gather intelligence by providing the enemy combatant a lawyer. In World War II, even though Miranda did not exist, and all the wars since then, no one has ever suggested to our military that once you capture an enemy combatant, that you give them a lawyer as a better way to gather intelligence versus holding them under the law of war.

So here is my recommendation to you. We have caught several high-value targets in the last year or two. We have read them their Miranda rights within days or hours of capture. You will never convince me criminalizing the war is the best way to gather intelligence.

I want to talk to you about this. I want to have more flexibility than we have with the current system. If we do not hold some of these people under the law of war for questioning as an enemy combatant, then we are going to lose the ability to gather intelligence. The only way you can protect this Nation is to interrupt the next attack because the people who are fighting do not mind being killed.

Can an American citizen be held as an enemy combatant?

Ms. LYNCH. Senator, with respect to an American citizen, I believe there would be a prohibition against holding them, against us holding them, as an enemy combatant.

Senator GRAHAM. Ma'am, that is not true. We have held several American citizens for a multiple period of years as enemy combatants: *Hamdi v. Rumsfeld*. Before I vote on your nomination, I want you to read *Hamdi v. Rumsfeld* and *Ex Parte Quirin*, where American citizens, collaborating with the Nazis, landed at Long Island and tried to attack the country. They were tried by a military commission. Military commission trials are not available to American citizens. They have to go under Article III. But we have under our

law in *Hamdi v. Rumsfeld* the idea there is no bar to this Nation holding one of its own citizens as an enemy combatant.

What recommendation—I want you to read those two cases and get back with me and see if that changes your mind.

What recommendation would you give an American citizen when it comes to joining ISOL or Al-Qaeda? What would you tell them to do?

Ms. LYNCH. Senator, with respect to an American citizen, or anyone who seeks my opinion on joining ISOL or Al-Qaeda, my recommendation would be, do not do it or you will face American justice.

Senator GRAHAM. Well, not so much you will face American justice. You are going to get killed if we can find you.

Ms. LYNCH. You may get killed before we can find you.

Senator GRAHAM. That is right. But if we find you, we can kill you. Anwar al-Awlaki. Do you know that guy?

Ms. LYNCH. Yes. He was—

Senator GRAHAM. Do you think the President acted within his constitutional authority to use a drone against him?

Ms. LYNCH. So with respect to Anwar al-Awlaki, I am familiar with him as he has figured in the radicalization of some of the defendants who have come before the Eastern District of New York, as well as a very active Al-Qaeda leader. I am not familiar with the ways in which the decision was made to use the drones against him.

Senator GRAHAM. Let me say—let me tell you how it was made. There is an executive process where there are executive agencies that evaluate the threat that every individual presents to the country. In the case of an American citizen, there are very strict criteria. But if they meet those criteria, the President can order the use of lethal force. I promise you, in every war we have been in American citizens for some reason have decided to side with the enemy and they have been viewed as an enemy combatant, not a common criminal.

The President of the United States, I think correctly, authorized a drone attack against Anwar al-Awlaki, who was the head of Al-Qaeda in Yemen. Would you want to look at that before you give me the answer? Are you comfortable with that process? Would you like to look at that process and get back to me?

Ms. LYNCH. Well, Senator, I am comfortable with the process as you describe it. What I think it illustrates, however, is the need to—as you put so eloquently at the beginning of our discussion—use all of the tools available to combat this war.

Senator GRAHAM. And I just want to make sure that, as the Attorney General of the United States, you understand one of the tools to combat this war is to use lethal force against an American citizen who our Government has determined to be part of the enemy force.

The second tool is to hold an American citizen, or a non-citizen, under the law of war for the purposes of intelligence gathering. Those are two tools in our toolbox that have been used for decades. I want to make sure, as Attorney General, you recognize those tools are available to us in this war as we go forward. Read these cases and get back with me, if you could.

Ms. LYNCH. Absolutely, Senator.

Senator GRAHAM. Thank you very much.

Online gaming. Are you familiar with the decision by the Office of Legal Counsel in 2011 to basically say that the prohibition in the Wire Act was limited to sporting events and contests?

Ms. LYNCH. I am generally familiar with the results of that.

Senator GRAHAM. Do you agree with that decision?

Ms. LYNCH. I have not read that decision, Senator, so I am not able to really analyze it for you. Certainly I think it was one interpretation of the Wire Act that was considered in the past.

Senator GRAHAM. Would you agree with me that one of the best ways for a terrorist organization or criminal enterprise to be able to enrich themselves is to have online gaming that would be very hard to regulate?

Ms. LYNCH. I think certainly that what we have seen with respect to those who provide material support and financing to terrorist organizations, they will use any means to finance those organizations.

Senator GRAHAM. I am going to send you some information from law enforcement officers and other people who have been involved in this fight and their concern about where online gaming is going under this interpretation. Thank you very much. From my point of view you have acquitted yourself very well. But I do appreciate if you would look and be able to answer my questions about enemy combatant status for American citizens and the use of lethal force.

Ms. LYNCH. Thank you, Senator.

Senator GRAHAM. Thank you very, very much.

And now I will turn it over to Senator Lee. You are now the Chair.

Senator LEE [presiding]. Thank you, Mr. Chairman.

Thank you for staying with us, and even through the hectic vote schedule.

I would like to go back to civil forfeiture, if that is all right, which is the topic we were discussing earlier before I left for the last vote.

First of all, I want to get back to the question I asked at the outset. Do you think it is fair, is it fundamentally just, that someone can have their property taken from them by the Government without any evidence that they have committed wrongdoing, based solely on a showing by the Government based on a probable cause standard that their property might have been involved in the commission of a crime, perhaps without their own knowledge, their own consent, their own awareness on any level? Do you think that is fair?

Ms. LYNCH. Senator, I think that we have a very robust asset forfeiture program, both criminal and civil. With respect to civil forfeiture, I have looked at the program in general. Again, the Department is conducting a review of the forfeiture program.

With respect to civil forfeiture, there are legal safeguards at every step of the process, certainly as instituted or implemented by my office and my understanding by my U.S. Attorney colleagues, so there will be judicial review before there can be attachment or seizure, for example, as well as an opportunity to be heard. But

that standard must be met before the seizure warrant can be issued.

Senator LEE. I understand. I understand. A lot of Americans do not believe that that is fundamentally fair.

Again, that is why in many States there have been laws enacted that restrict the use of civil forfeiture under those circumstances and impose additional requirements, which is why I raised the concern about the process by which the Department of Justice has, on occasion in the past, used something known as adoption, whereby they will take something that could not be forfeited under State law in State court and they will utilize the resources of the U.S. Department of Justice to assist in the forfeiture.

The U.S. Department of Justice retains 20 percent and then yields back 80 percent to the State and local law enforcement agencies. This is troubling. You appeared to be aware when I asked you about this. You appeared to be aware about an order that Attorney General Holder issued just about a week and a half or two weeks ago—I believe it was on January 16—restricting that. So I assume you are familiar with that order?

Ms. LYNCH. There was an order or policy directive from the Attorney General to the field, and as U.S. Attorney I did receive that, and it essentially ends the adoption program. As you point out, Senator, a number of States now do have a robust asset forfeiture program on their own.

When the Federal program was being instituted, at least the research shows, many States did not have this program.

So a lot of the local law enforcement agencies that have been used in the adoption program initially did not have a venue to effectuate legal seizure of property that had been used in a crime. The adoption program began several years ago, primarily as a response to that. That has changed. That legal landscape is very different, and that certainly was one of the reasons set forth in our discussions when the policy change was made.

Senator LEE. Okay. So this order that the Attorney General issued on January 16th, you referred to it as essentially ending this adoption program—again, the program by which the Federal Government can assist State and local law enforcement agencies in circumventing their own State law restrictions on civil forfeiture.

But when you read the order, you see that it is subject to several exceptions. One exception applies with respect—I think you referred to this briefly before when you and I spoke a few hours ago. One exception relates to property that directly relates to public safety concerns. Fair enough.

Then you turn to the next page and you look at the second-to-last paragraph, which contains some additional carve-outs. This order does not apply to: (1) seizures by State and local authorities working together with Federal authorities in a joint task force; (2) seizures by State and local authorities that are the result of joint Federal/State investigations or that are coordinated with Federal authorities as part of ongoing Federal investigations; or (3) seizures pursuant to Federal seizure warrants obtained from Federal courts to take custody of assets originally seized under State law.

As I see it, Ms. Lynch, this order, while purporting to end this adoption program, as you say, is riddled with loopholes. It is rid-

dled with loopholes that effectively swallow the rule, which seems to be a recurring theme today, which is something that concerns me greatly with this Department.

Now, I understand that this order was issued, has been issued prior to your confirmation—after your nomination, prior to any confirmation vote on your nomination. But I would just ask you to take into account these concerns and to work with me moving forward on making sure that our civil forfeiture programs do not get out of control.

But would you agree with me that we really ought to find ways to stop Federal law enforcement agencies from helping State governments to circumvent their own State law restrictions on civil forfeiture?

Ms. LYNCH. Senator, I believe that the policy change that ended the adoption program certainly ends that as the problem that had been raised. As you pointed out, these were situations where local law enforcement made an initial stop or seizure, so the seizure was not essentially begun by a Federal agent or partner, and then the matter was brought to a Federal agent for adoption and processing through the Asset Forfeiture–Equitable Sharing system therein.

The other situations to which you refer where there is either a Federal/State task force or a joint investigation really are situations where there is actually a Federal case from the outset and there would not be the issue of having to review the State laws and they would not be an option in that case, because again the case would be under Federal jurisdiction from the very beginning.

So as you have pointed out, the initial adoption program did raise concerns. I understand that those have been discussed in the public discussion venue, as well as in law enforcement circles as well, about the issue where the State has a robust system of asset forfeiture but that system is not being used and the Federal system is being used instead. The adoption program ends that practice.

Senator LEE. It ends it but subjects it to some very large loopholes. So I would just ask you to be aware of that, and I would like to discuss that with you more moving forward.

Before my time expires, I want to get back to another question I asked earlier. Indulge me in this hypothetical scenario. We did not have time to fully explore it previously. But imagine you are in a State in which there is a 55-mile-an-hour speed limit. There are a lot of people who want that speed limit raised. Imagine that the Chief Executive of that State, the governor, really wants it raised to, say, 75 miles an hour. There is a lot of support within the legislature and among the public at large that there needs to be some reform to the speed limit law, but they cannot get to any one proposal that gets enough votes and so nothing happens.

The governor at that point decides that he will announce that anyone who wants to drive faster than 55 will not be ticketed and they can apply for certification that they will not be ticketed if they want to drive up to 75 miles an hour. He says I cannot guarantee this forever, but I can guarantee it for the next three years, I will not be enforcing that.

Would that, under that hypothetical scenario, not be tantamount to a usurpation of the legislative role that belongs to the legislative branch?

Ms. LYNCH. Well, Senator, with respect to your hypothetical, before I could provide a response I would certainly want to understand not just the factual framework that you have outlined, but the relevant laws governing the situation, as well as any prior State action, any actions that had been sanctioned, all the types of things that would go into rendering a legal opinion. And certainly, as I am sure you can appreciate, I am a careful lawyer and I would want to have all of that information before I could really give you a legal opinion as to your hypothetical situation.

Senator LEE. Okay. I understand. I respect the great care that you devote to answering questions. But I would respectfully submit that at some point there is a limit to what a Chief Executive can do, whether we are talking about a Chief Executive in the form of a Governor at a State level or whether we are talking about a Chief Executive who is the President of the United States. At some point I would hope you could agree with me that there are limits to what a Chief Executive can do.

At some point, when saying I am not going to enforce this law—suppose it is not speed limits, let us say it is taxes. A future President of the United States, whether a Republican or Democrat, says I do not think we ought to have any tax rate above 25 percent and at some point that President cannot get Congress to agree, so that President says I am not going to enforce any tax rate above a 25 percent marginal rate.

We can think of lots of examples. At some point there is a limit and I hope that you will recognize that and hope that moving forward, should you be confirmed, that you be one who is willing to point out to the President of the United States that you do have a client. Your client is the United States of America.

The chief spokesperson for that client might be the President himself, but your client is the United States. Embodied within that are the constitutional restraints that fall upon every officer sworn to uphold, protect, and defend that Constitution, including the President himself.

I see that my time has expired. I recognize Mr. Blumenthal.

Senator BLUMENTHAL. Thank you, Senator Lee. As a careful lawyer, which I know you are, I want to try to perhaps set your mind a little bit at ease about a question that you were asked earlier. The question related to a statute that purportedly, according to the questioner, made the Attorney General responsible for determining who can take deferred action.

One of my colleagues suggested that the President's Executive order is illegal because it is being implemented by the Department of Homeland Security and not the Attorney General, as the law he quoted seemed to suggest.

Just to clarify, the statute that was quoted to you actually was amended in 2002. It no longer assigns responsibility for immigration policy to the Attorney General. The provision that he quoted, and another provision which more directly authorizes what President Obama has done, are to be implemented by the Secretary of Homeland Security.

So, good news: the President has done nothing wrong and you do not have to run home and look up the statute and get ready to im-

plement a whole new area of law. You have enough to do, or will have enough to do already.

I want to personally say that I appreciate that my colleagues are not making immigration policy the kind of turning point for their decision, or to put it a different way, they are not making this nomination a referendum on the merits of the President's immigration policy and decisions.

I must say I agree with the President's action and support him, and so do sheriffs and chiefs of police across the country.

I am going to ask, if there is no objection, that letters that I have from towns as varied as Marshalltown, Iowa; Salt Lake City, Utah; South Bend, Indiana; be made a part of the record, and also a letter from the National Task Force to End Sexual and Domestic Violence Against Women.

Both letters—all these letters make the case that the President's Executive action not only helps immigration officials target their scarce resources, but it also helps State and local law enforcement to secure cooperation with immigrant communities and identify potential criminals within their jurisdiction. So the beneficiaries of the President's policies are not just the immigrants, but also law enforcement officials and people who are better protected by virtue of the activities of those law enforcement officials. If there is no objection, I ask that these materials be entered into the record.

Senator LEE. Without objection.

[The letters appear as submissions for the record.]

Senator BLUMENTHAL. Thank you.

I want to turn, briefly, to another area where you have some very profoundly valuable experience. In the wake of the events in Ferguson, Missouri, and New York City of last year, many of us on the Committee and many around the country who have backgrounds in law enforcement are deeply concerned with making sure the public understands the vital role that our police and our law enforcers in general play, as well as proper training and discipline that should be provided to those police and law enforcers.

I wonder if you could talk about your experience in addressing the concerns about law enforcement in the wake of the *Abner Louima* case, where you had a professional involvement. I think how you feel, that that experience and new policies at the Department of Justice might better help the Department of Justice and State and local police.

I would mention that I led an effort to pass during the last session a statute relating to death in custody. It is the Death in Custody Reporting Act. It requires local and State police to report deaths in custody, along with correction officials. It is actually a reauthorization of a law that expired in 2006, just a modest step toward gaining more facts. But I think there are obviously two sides to this kind of issue and I would very much appreciate your perspective on it.

Ms. LYNCH. Certainly. Thank you, Senator. With respect to my work on the *Louima* case, I was certainly privileged to be a part of the trial team that handled that case. I think what often is not commented on, and perhaps it is not even widely known, is how essential the support and contributions and the actual work of the

NYPD was to both the investigation and the prosecution of that case.

Our investigative team was comprised of both FBI agents and New York City police officers who knew that unless we held each other accountable, that unless law enforcement acted to hold bad actors accountable, all of law enforcement would suffer. And certainly one of the most painful things to watch during that case was, as is often happening now, the understandable anger and tension over it, but the backlash against larger groups of police officers.

That is, in fact, one of the dangers of not addressing police misconduct, is that not only are the officers who work hard every day and work to not only follow the rules, but to enhance the relationship between law enforcement and the community. Those officers are not rewarded, but they often get painted with the same brush as officers who may cross the line.

That is one of the greatest harms that we see from these types of cases. I have been privileged to work with dedicated police and agents my entire career and I think that there are no greater teachers and no greater instructors for a young prosecutor than an experienced police officer.

One of the things that we found most useful after the *Louima* case was encouraging community policing, which the NYPD was doing on its own, and a number of officers did very, very well. I have seen situations where, when I was handing out awards to officers and agents for working on a case in a mostly minority area, cleaning out a housing project of a violent crack organization, the residents asked if they could also come and hand out plaques to those same officers and agents, and they did so with plaques that said, basically, thank you for giving us back our safety, our security, and our houses, because there was a collaboration there. There was a recognition that this is a joint effort. This is a shared project that we all have between law enforcement and all the communities that we serve to keep all of us safe.

We also have to work more, and certainly, if confirmed as Attorney General, one of my priorities will be to ensure that our police officers have the tools that they need to do their jobs and to do them safely. Senator, I spent several weekends this past month attending the funerals of Detectives Ramos and Liu in New York City. To use the word "heart-wrenching" is, frankly, an understatement. The sense of loss and grief with this crime that has really touched the heart of New York City was palpable on every street corner. We cannot allow our law enforcement officers to be targets like this. We must provide them the protections they need to do their jobs as well.

So certainly it is a priority of mine. I look forward to working with you to address the legislation that you described as well because the more we can get adequate information about these deaths in custody, the more we can put effective regulations, rules, and training in place to prevent them.

Senator BLUMENTHAL. Thank you. Thank you for that excellent answer. I can tell you that the grief over the loss, the assassination of those two brave and dedicated police officers, was shared in Connecticut. As a former United States Attorney, as well as a State At-

torney General, my own experience has been that some of the strongest condemnation of improper conduct or impropriety on the part of police officers comes from the police and other law enforcement themselves, and they have the toughest job—one of the toughest jobs, in my view—that exists in public service.

I hope that the public appreciates it and that, as Attorney General, you will work with Congress to try to educate and make the public aware about the tremendous challenges they face day in and day out and the courage and strength that they demonstrate. So I thank you for that answer, and thank you again for being here today.

Thank you, Mr. Chairman, whoever the Chairman is.

[Laughter].

Senator LEE. It is a flexible answer.

Senator BLUMENTHAL. Well, I know that the Chairman is the Senator from Texas.

[Laughter].

Senator BLUMENTHAL. That is a nice answer to that question.

Senator CRUZ [presiding]. Ms. Lynch, thank you for your endurance in what has been a long, extended hearing. I would ask in this round of questions if you could try to keep your answers brief because we have got to return to votes on the floor.

In the prior round, you and I had a conversation about the OLC opinion and the President's Executive amnesty. You stated your agreement with the legal reasoning in that OLC opinion. I would like to explore the limits of that reasoning. As you know, any legal theory that is being put forth to justify Government power naturally raises the question, What are the limits of that power? One of my greatest concerns about the Holder Justice Department is that at every turn, when asked, "What are the limits on Government power?" the answer has been, "There are none, there are none, there are none."

So let us talk about the limits of the prosecutorial discretion power. The OLC memorandum justifies Executive amnesty, in part based on prosecutorial discretion.

Initially that was limited to some 800,000 people in the original DACA, then in the subsequent Executive amnesty that expanded to 4 or 5 million people.

My first question to you is, in your understanding of prosecutorial discretion, is there anything to prevent that from being expanded from 4 or 5 million people to all 11 or 12 million people who are currently here illegally?

Ms. LYNCH. Well, Senator, as I read the legal opinion, it was focusing on how the Department of Homeland Security could best execute its Executive discretion in prioritizing removals of the most dangerous of the undocumented immigrants among us.

Then with respect to those who would be a low priority, it focused on the legal framework for setting up a deferral program. As I also read the opinion, it went through a legal analysis that indicated that part of the request did not have the requisite legal framework and should not be implemented. My understanding is that that particular part of the request was not implemented.

So I think that with respect to any action, certainly, should I become confirmed as Attorney General, I would undertake a very

careful legal analysis based on all of the facts presented to me by either the White House or whatever agency raises the issue.

We would look at all of the precedent, congressional action, the relevant statutes, and carefully explore whether or not the requested action did have a legal framework. If there was, in fact, a reasonable basis for it, as was outlined in the opinion that I read, that information would be provided. But as also was outlined in the opinion that I read, where the legal framework did not exist to support the request or the proposed action, that would have to be told to the requesting Department.

Senator CRUZ. Ms. Lynch, let me try again because you described the memorandum, but I asked a pretty straightforward question: Would prosecutorial discretion allow the President to decline to enforce immigration laws against all 11 to 12 million people here illegally?

Ms. LYNCH. Senator, prosecutorial discretion, as a tool, certainly as I have used it as a career prosecutor and U.S. Attorney, would focus on which cases to prosecute and which types of charges to bring. It would not apply to the situation that you have outlined, so I am sorry if I am not able to answer your hypothetical in the way in which you are requesting.

As I have utilized prosecutorial discretion throughout my career, it has been with the presentation of cases before me and determining the best way to focus limited resources.

Senator CRUZ. Well, and of course this is not simply prosecutorial discretion because in addition to stating that Federal immigration law would not be enforced with respect to somewhere between 4 and 5 million people, the President also announced that the administration would be printing work authorizations in direct contravention of Federal law.

Now, are you familiar in your practice as U.S. Attorney, when you have declined—when you have used prosecutorial discretion to prioritize prosecuting one crime versus another, have you ever engaged in printing up authorizations for one set of individuals to violate the law, to affirmatively violate the law, which is what these work authorizations consist of?

Ms. LYNCH. Senator, in my practice as a career prosecutor and U.S. Attorney I have focused on bringing the strongest, most effective cases based on the facts and the law that have been presented to me, also when referring those cases to other law enforcement agencies should my venue not be the most appropriate one there.

With respect to—

Senator CRUZ. Ms. Lynch, I am sorry to interrupt but we are on limited time. What I asked is if, in your practice, you ever issued authorizations to violate the law. That—I am certain the answer is “no.” But am I correct in that?

Ms. LYNCH. Senator, in my practice I focus on building the most strongest, most effective cases against the perpetrators who come before me and referring them to other jurisdictions if I am not the appropriate venue. It would not be a part of my responsibility—

Senator CRUZ. Ms. Lynch, you are—

Ms. LYNCH. To make a determination in the matter you are referring to.

Senator CRUZ. Ms. Lynch, you are a very experienced prosecutor. You have asked questions and had witnesses decline to answer. This is a simple question: Has your office issued authorizations for individuals to violate Federal law?

Ms. LYNCH. Senator, as the U.S. Attorney, our office is not involved in issuing authorizations for anyone to work or not work, or to engage in various activities. We are not a licensing authority so I am just not able, unfortunately, to answer the question as put to me.

Senator CRUZ. So your office has not. Are you aware of a precedent for the Federal Government doing what the administration is doing right now, which, it has hired over 1,000 people, it is printing millions of authorizations for individuals to violate Federal law. That is a remarkable step and it is a step that goes much further than simply prosecutorial discretion. Are you aware of any precedent for hiring over 1,000 people to issue authorizations for individuals to violate Federal law?

Ms. LYNCH. Senator, I am not aware of the practices that you are referring to now, nor am I aware of how the particular remaining portions of the Executive action are being implemented. So I am simply not able to comment on the hypothetical as presented to me, or the particulars that you have given to me. So I am sorry I do not have the information to answer your question.

Senator CRUZ. Well, then let me understand the limits of the legal theory you are putting forth because you, in prior questioning, embraced the prosecutorial discretion argument. So Senator Lee asked you a minute ago—let us take the hypothetical Senator Lee asked you about. If a subsequent President, let us say President Cornyn, is sworn in in January of 2017, and if President Cornyn decided that he was going to instruct the Secretary of Treasury not to collect any taxes in excess of 25 percent, to exercise prosecutorial discretion and not collect the taxes. In your legal opinion, would that be consistent with the Constitution?

Ms. LYNCH. Senator, before I could render a legal opinion on the hypothetical as presented to me I would want to know the entire scope of the action, but also have the time to gather all of the legal precedent, the cases, congressional actions, any other similar or dissimilar actions where that particular type of action might have been considered.

So I would certainly want to have all of that before I provided a legal opinion in terms of the hypothetical that you have presented to me.

Senator CRUZ. So you are unable to give any legal judgment to this Committee today on whether a subsequent President could decline to enforce the tax laws as they are written?

Ms. LYNCH. I think with respect to current or subsequent presidential action there would have to be, as in every case, a thorough review of the relevant law, the precedent, congressional precedent, the statutes in issue, in conjunction with whatever action was being proposed, to see if there was in fact a legal basis or whether there was not a legal basis for the action being proposed.

Senator CRUZ. Well, and let me ask—and this will be my final question—your understanding of prosecutorial discretion. Would it allow a subsequent President, President Cornyn, to state that there

are other laws that the administration will not enforce? Labor laws, environmental laws. Would it allow a President Cornyn to say, every existing Federal labor law shall heretofore not apply to the State of Texas because I am using my prosecutorial discretion to refuse to enforce those laws? In your judgment, would that be constitutional?

Ms. LYNCH. Well, I certainly cannot imagine President Cornyn taking that step.

[Laughter].

Ms. LYNCH. But with respect to the hypothetical that you present, again, Senator, I would have to know what legal basis was being proposed for that and certainly I would review that law, and if I were the person providing advice to future President Cornyn, advise him as to whether or not there was a legal framework for it or whether there was not a legal framework for it. If there was not, that would be the advice that I would provide to him.

Senator CRUZ. I must say, I find it remarkable that you are unable to answer that question. I can answer it straightforward: It would be patently unconstitutional for any subsequent President to refuse to enforce the tax laws, or the labor laws, or the immigration laws for the very same reason that President Obama's actions refusing to enforce immigration laws are unconstitutional. It is discouraging that a nominee who hopes to serve as Attorney General either will not—will not give a straightforward answer to that question.

My time at this point has expired, so I recognize Senator Franken.

Senator FRANKEN. Thank you, Senator, Mr. Chairman.

I am sorry, I am just a little shook up about this President Cornyn thing.

[Laughter].

Senator CORNYN. It is your worst nightmare.

Senator FRANKEN. Okay. I got here and suddenly Cornyn was President and my world had changed.

[Laughter].

Senator FRANKEN. I would like to ask you, Ms. Lynch, about something that has been a focus of mine since I first got to the Senate. I got there a little early. It took me a while to get seated. It is about the financial meltdown and how it happened and how it caused the Great Recession.

And it is about the credit rating agencies and their business model. And basically what happened in the lead-up to the meltdown was that banks would put out structured financial products, subprime mortgaged-backed securities, say. And then they would pay—or I am sorry, yes, they would choose a rating agency like Standard & Poor's or Moody's or Fitch to rate it and give them a rating.

And they would pay them, but they would choose them and it turned out that a lot of junk got triple-A ratings. And this is all kinds of—not just subprime mortgage-backed securities, but then bets on those derivatives and then bets on the bets and then bets on the bets on the bets. So the reason you had a house of cards collapse is because you had all these bets based on the original piece of junk and there was an incentive, a total conflict of interest,

which is: The credit rating agencies knew that if they gave a triple-A rating, they would get the next gig. So that is what they did. And then Chairman Levin of the Permanent Subcommittee on Investigations subpoenaed some emails from within S&P and they basically were emailing each other, we have got to give these things that are not good—the financial products—better ratings so we can keep our share of the business.

And I have been fighting to get the—I had actually a bipartisan piece in the Senate side of what is now called Dodd–Frank, the Wall Street reform bill, to fix this. It has not totally been fixed and I am on the SEC to do it. But this is what I am getting to: the Department of Justice has a big lawsuit against S&P. And I think it is for about \$5 billion or \$6 billion and my understanding is, it may be being settled. But, I just do not want this to stop with S&P, with the one agency.

And actually SEC just did a settlement also with S&P on this same practice that still exists. So what I want to know is, will you take an aggressive approach to holding these rating agencies—including, but not limited to, S&P—accountable for their role in the financial crisis from before, and their current role in what they are doing?

Ms. LYNCH. Senator, certainly with respect to the financial institutions, including the ratings agencies, if I am fortunate enough to be confirmed as Attorney General, I do look forward to taking a very aggressive stance in reviewing their conduct. As you indicated, not just past conduct, but current and prospective so that we can prevent these types of harms from occurring again.

Senator FRANKEN. Because Minnesotans lost their homes, they lost their savings, they lost their jobs, and millions of Americans did this because of these guys. And I do not think they have learned their lesson, and I do not think they have been incentivized to learn their lesson.

Okay. I am told I have to leave in two minutes. So I just want to talk a little bit about transparency in NSA. I have one minute. That took a minute, what I did.

Well, I just want to encourage us to work together if you should be Attorney General on transparency in Government surveillance because I think that Americans have the right to know to the extent that it is not harmful, obviously, what surveillance is like. For example, how many Americans' data was captured, say, in the metadata, but how much was actually accessed. And I think that had we done that, and I voted against these two programs, 215 and 702, originally, because they did not have enough transparency, and I think it is absolutely essential that Americans know to the greatest degree possible without jeopardizing our safety what is going on. So just your commitment to work together on that.

Ms. LYNCH. Absolutely, Senator.

Senator FRANKEN. Okay. Thank you, Ms. Lynch.

Ms. LYNCH. Thank you, sir.

Senator FRANKEN. Mr. President.

[Laughter.]

Senator CORNYN. How are you holding up?

Ms. LYNCH. I am fine, sir.

Senator CORNYN. Hanging in there? Good.

Forgive me for jumping around a little bit, but there are a number—I know there have been a lot of different areas that you have taken questions on and I just want to fill in some of the gaps.

First of all, do you recognize the Second Amendment right to keep and bear arms as an individual right?

Ms. LYNCH. Yes, Senator. And I believe that has also been decided by the Supreme Court as well.

Senator CORNYN. The Attorney General—the current Attorney General and the Department of Justice had been involved in a program known as Operation Choke Point that you are probably familiar with to some extent. But this is a collaboration by the Department of Justice and the Federal Deposit Insurance Corporation, who have partnered to discourage banks and other financial institutions from doing business with certain types of businesses including lawful firearms dealers. Documents from Operation Choke Point obtained by the House Oversight Committee showed that the DOJ and FDIC used intimidation tactics and categorized licensed and law-abiding gun dealers as having engaged in “high-risk activity” similar to financial scams, prostitution services, pornography, racist materials, gambling, and drug paraphernalia.

I would just like to ask you, do you agree that it was inappropriate for the Department of Justice and the FDIC to associate licensed and law-abiding businesses with these types of other obviously illicit activities?

Ms. LYNCH. Senator, I appreciate your concern over any Department initiative. My familiarity with the Choke Point Initiative is based upon my understanding that it focuses on payment processing companies that are involved in defrauding consumers. And I am not aware enough of the underlying types of businesses that the consumers themselves may have been patronizing to know about the fact that you raise.

Certainly with respect to any initiative that the Department of Justice engages in, should I be confirmed as Attorney General, there is no room for improper bias or even personal views. We must follow the law where it leads us. And I certainly hope that should you have concerns about this program or any other, that you would feel free to share them with me and that I would look forward to working to provide you with as much information as we could about them.

Senator CORNYN. I appreciate that. I have heard from constituents back home in Texas from financial institutions that they have been unable to continue long-standing banking relationships with their own lenders because of some of these tactics. And I will take you up on your offer to visit with you more about those, the specifics of those cases, as well as the topic I mentioned earlier at a later date. I appreciate that.

Senator Leahy, who just arrived, and I have joined in an unlikely partnership on freedom of information areas. He and I both agree that it is absolutely critical to the functioning of our democratic form of Government that the people have access to as much information as they can possibly get, so they can make their consent to the laws that are passed informed consent.

And so I want to ask you, in the Department of Justice’s evaluation of the Eastern District of New York under your management,

compliance with the Freedom of Information Act was one of the few areas to receive criticism. In fairness to you, it is one of the few areas in which there have been critical comments. But do you believe that the Government should operate under a presumption that information should be open to the public unless otherwise precluded by law?

Ms. LYNCH. Senator, I share your concern and your view that the Freedom of Information Act is an important tool for the American people to know about the functioning of all Government agencies, including the Department of Justice.

With respect to my tenure as U.S. Attorney, during the evaluation system which I found very, very helpful, I specifically asked the evaluator to look at our management systems and our support staff systems to make sure that we were in compliance and to bring any issues to our attention.

They raised this issue, which was of great concern to me. We immediately took steps to rectify the issues that we found within our own office functioning. We have added increased personnel to handle Freedom of Information Act requests. We work closely with the Department of Justice to ensure that they are handled as expeditiously as possible.

And so I actually found it a very helpful evaluation process. And I find that I have learned the most when someone has pointed out to me an area in which I might improve.

Senator CORNYN. And you took corrective action?

Ms. LYNCH. Absolutely, immediately.

Senator CORNYN. President Obama in 2009 mandated that Government agencies—executive branch agencies should operate under the presumption that information should be open unless otherwise prevented by some rule or some other law.

The current Department of Justice has taken the position that information should be withheld if release of the information will cause foreseeable harm. In other words, they articulated a different standard than the President himself called for in 2009, which is this presumption of openness absent some legal prohibition against disclosure.

Senator Leahy and I have been working on some legislation which would actually codify the President's mandate, the presumption of openness. Is that a standard that you could support, and would you work with us in your administration, if confirmed, to make sure that this presumption of openness applies across Government agencies and that information would only be withheld from the public if some law or other rule or regulation precluded?

Ms. LYNCH. Senator, I share your view in the importance of the Freedom of Information Act and in transparency. And certainly I look forward to working with both you and Senator Leahy to review that type of legislation. And I hope that in the full and fair exchange that I believe we will have, as we have had over the past few weeks, we can discuss ways in which to make as much information available as possible while protecting vital interests.

I certainly feel that with respect to the Department of Justice, should I be confirmed as Attorney General, one of the areas that we always have to be concerned about are ongoing investigations

and witness safety and security. But I feel that through discussing these issues, it is something that we could work together on.

Senator CORNYN. And finally, I know the Chairman alluded to the gunwalking program known as Fast and Furious, which was the subject of a lot of oversight efforts by this Committee and others in the House, and then to our surprise Attorney General Holder claimed executive privilege as to certain communications and documents, even though the documents in question did not involve the President or his staff, and the President himself confirmed that claim of executive privilege.

As you may know, that claim is currently in litigation and I would ask your commitment to take a look at that with a fresh set of eyes to see whether you believe that the Department's defense and continued refusal to deny Congress access to these documents is justified under a claim of executive privilege. Would you pledge to take a fresh look at that and render your own independent judgment about that?

Ms. LYNCH. Well, certainly, Senator, with respect to that matter, it is the subject of ongoing litigation and I really do not know when it is likely to be resolved. So I do not know what stage it will be in should I be so fortunate as to be confirmed. Certainly, however, I look forward to learning more about it once I am able to, again, should I be confirmed, and in reviewing that as well as any other matters.

Senator CORNYN. Just so we understand each other and this will be my last question, if you are the next Attorney General, you can decide to settle that case if you decide that the claim of executive privilege was not well taken. In other words, if there is no legal impediment based on a claim of executive privilege to disclosing those documents, you, as the next Attorney General could resolve that, couldn't you?

Ms. LYNCH. Certainly. I believe that the ability to resolve any number of cases would rest within me should I be confirmed as the next Attorney General.

Senator CORNYN. Thank you.

Ms. LYNCH. Thank you, Senator.

Chairman GRASSLEY. I hope that when we are done here that you do not get this attitude that the way this chaotic place is run, why should you be working with a Congress of the United States that does not always work this way. So I am just—it is a little tongue in cheek. But—

Senator LEAHY. It does not always work this way.

Ms. LYNCH. Well, Senator, it has been a privilege to watch the peaceful transfer of power that has gone on this afternoon.

[Laughter.]

Senator LEAHY. I did not give him the great big gavel.

[Laughter.]

Chairman GRASSLEY. Okay. Here we go. Before I read my question, I want to kind of tell you, my view is, that there is a very legitimate reason for between a counsel that is advising the President for that to have a very tight counsel/client relationship. Then we get into Fast and Furious and then 64,000 pages, and I will go into some detail here that I want you to comment on that is maybe an argument that was privileged, but is it really privileged?

So let me go to where you maybe had not a direct role, but you were Chair—you chaired the Attorney General's Advisory Committee. So you had a chance to watch your predecessor closely in the job that you are now seeking. And I assume that you learned lessons from that experience.

What is the biggest mistake that Attorney General Holder made in the handling of the Fast and Furious controversy which involved this privileged information that we are talking about? And what would you have done differently?

Ms. LYNCH. With respect to the privileged litigation which is ongoing, as a Chair of the Attorney General's Advisory Committee and a member before that, I was given general information about the nature of the investigation itself and the problems that lay therein. Simply put, Senator, the focus in terms of providing information to the U.S. Attorney community was more on the problems with the actual underlying firearms investigation. And so I was not privy and have not been privy to any of the decisions or discussions or rationale behind the litigation over documents or privilege. That is something that has not been shared with the U.S. Attorney community. So I am not able to really categorically answer one way or the other as to how that has been managed.

I certainly think that the Attorney General himself has said that he's made mistakes in general. And he's been very open and frank about that. With respect to that litigation, I simply do not have information about that. You are correct, I did receive general information about the underlying case because it did represent an investigation that certainly the review—the Inspector General's report—indicated was not handled in the best way and was not the way in which those of us in the U.S. Attorney community would have wanted to see that case operate at all.

Chairman GRASSLEY. Okay. Well, then you have probably have answered half of that in this sense. Would you have done anything differently?

Ms. LYNCH. With respect to the firearms investigation?

Chairman GRASSLEY. No, the way that the Attorney General handled it?

Ms. LYNCH. Well, with respect—certainly I think that having the Inspector General review the firearms investigation itself and come up with the issues that occurred within the office and the handling of the case was something that I think will be useful to the Department of Justice as it seeks to prevent similar mistakes being made and improved training and the like. With respect to the litigation over the documents, again, I simply have not been involved in those decisions. And so I am not able to say what the options were that the Attorney General had that I would have chosen in a different manner. So I am sorry for not being able to provide you with a direct response to that question.

Chairman GRASSLEY. Let me go back to the privilege and you may have answered this, but I want to read my question anyway. In my opinion, one of the Attorney General's biggest mistakes was not following through on the President's promise to be the most transparent administration in history. Instead, he became the first Attorney General in the history to be held in contempt of Congress with a bipartisan vote that included 17 Democrats.

Attorney General Holder finally delivered 64,000 pages of documents to the House three years after the House subpoenaed, two years after the contempt vote, and only after the House went to court. So when push came to shove, he did not even try to argue to the judge that those 64,000 pages were privileged.

Now, do you think it is appropriate to withhold so many documents for so long, especially even if the Justice Department admits that there was no valid privileged claim? And if so, why? And if not, please explain why you would do it differently?

Ms. LYNCH. With respect to any issue where this body seeks information from the Department of Justice, certainly in documentary form, should I be confirmed as Attorney General, I would carefully review the request and work to provide as much information as could be provided consistent with our law enforcement investigative responsibilities.

That would be my pledge to you going forward, Senator.

With respect to every issue of oversight that you would bring to my attention, I certainly hope that you would bring those issues to my attention.

Chairman GRASSLEY. Can I ask the same question in my own way in the sense of the way you might talk about it at a town meeting? So people are mad about, you know, a lot of things the President might do that you call Executive edicts or in this case withholding information. In this case, the Attorney General decided to withhold it.

Okay. If somebody asks me about Fast and Furious at a town meeting, then I get into the fact that as far as I know the President knew nothing about it and that this is between me and the attorney—or the Attorney General and the Congress, I should say. I only say “me” because I started this investigation before the House took it over.

Then when they withhold 64,000 pages as opposed to a few pages where maybe the President really knows something about something that you can legitimately withhold it. Then I say to my town meeting, you know, when 64,000 pages are supposedly privileged, then I wonder, what does the President know about it if they can be protected that way?

Well, now the Attorney General did not argue that they were privileged. They were just given up. So you see the problem it causes for me. And how far does executive privilege go? And it surely does not go to 64,000 pages; if it does not, can't you assume that the President knew a lot about Fast and Furious when he says he did not know anything about it? Do you see the problem that I have?

Ms. LYNCH. I certainly can understand the frustration when any party is seeking discovery or seeking information and another party is not able to provide it, based upon the claim of privilege or whatever that claim may be. Particularly a body that has oversight responsibility over the Department of Justice and is seeking to fulfill that obligation and that mandate.

Certainly, with respect to the volume of documents, not knowing the documents, I am not able to comment on how appropriate or not that would be. And certainly, fortunately, it was not civil litiga-

tion when it might have been a larger number of documents was my experience as a young attorney.

Chairman GRASSLEY. But I hope you at least understand why it is frustrating to me the way this whole thing was handled.

Let me move on. As Senator Graham mentioned: in 2006, you co-signed a Supreme Court brief on partial-birth abortion. I believe you told him your primary concern was the impact the law would have on law enforcement more broadly if upheld. That brief argued the Federal Partial-Birth Abortion Ban Act was unconstitutional and that partial-birth abortion “procedures are sometimes the best means to preserve a woman’s health.” The Supreme Court, along with a majority of Americans, disagreed with any position taken in opposition of that legislation, I assume as well as your position. The Supreme Court held there is “uncertainty (in the medical community) over whether the barred procedure is ever necessary to preserve a woman’s health.” Just one question. Judging by your questionnaire, it does not look like you have added your name to a lot of Supreme Court briefs. Of all the cases that you could have become personally involved in, why did you pick this particular case? Was that the only case that raised the concerns you mentioned to Senator Graham? And I would like to get this on record, because I assume you read the brief, otherwise you would not have signed it; would that be right?

Ms. LYNCH. Yes, Senator, that would be correct.

Chairman GRASSLEY. So then can you say why did you pick this particular case if you have not done it very often? And was this the only case that raised concerns that you mentioned to Senator Graham.

Ms. LYNCH. Thank you, Senator. With respect to the amicus brief, I joined a group of former Department of Justice personnel, former United States Attorneys, as well as former Assistant Attorneys General. And our focus was on our concern that the way in which the law would be implemented might put prosecutors at variance with doctors and their medical treatment and might raise an issue that prosecutorial discretion had been constrained in some way by the political debate.

We were not focused on the actual issue involving the procedure itself. In fact it was our concern that as lawyers we did not have medical information or the medical capability to evaluate that procedure and could be dealing with a situation where a doctor may say something different from what the law might require us to do. And that was the concern that was being raised in that brief.

The Supreme Court did resolve the issue on the part of the statute itself and certainly that is the law of the land now.

Chairman GRASSLEY. Okay. Senator Leahy.

Senator LEAHY. Thank you very much.

Chairman GRASSLEY. And for both your benefit and for the nominee’s benefit, I have been told that I have two additional Members that want to come over to ask a second round.

Senator LEAHY. Are they going to come today?

Chairman GRASSLEY. They are going to come just as soon—yes. I am going to make sure they come today, just as soon as the vote is over, I have been told. And you and I will have to go vote, too.

Senator LEAHY. Okay. Why don't we just recess and we will go vote and then we will come back?

Chairman GRASSLEY. We will recess. Thank you for being patient.

[Whereupon, at 5:06 p.m., the Committee was recessed.]

[Whereupon, at 5:12 p.m., the Committee reconvened.]

Senator CRUZ [presiding]. Welcome back.

Ms. LYNCH. Thank you, Senator.

Senator CRUZ. In an exchange we just had earlier this afternoon, you detailed a very broad understanding of the President's potential authority and, try as I might, I could not find a hypothetical that you consider to be beyond the power of the President.

I would like to ask you now a question that I have asked Attorney General Holder and that he repeatedly declined to answer, and it is in a different context. It concerns the civil liberties and privacy rights of Americans and drone policy.

My question to you is, in your legal judgment, is it constitutional for the Federal Government to utilize a drone strike against an American citizen on U.S. soil if that individual does not pose an imminent threat?

Ms. LYNCH. Senator, certainly, I am not aware of legal authority that would have authorized that nor am I aware of a policy seeking authorization to do that. If you could, share more information with me.

Senator CRUZ. My question is about the constitutional limits on the Federal Government's power. Attorney General Holder repeatedly declined to answer the question about whether it is constitutional for a drone to use lethal force against an American citizen on U.S. soil if that individual does not pose an imminent threat.

Now, let me be clear. I think the answer to this is very easy. My question to you is, is it constitutional for the Federal Government to do so?

Ms. LYNCH. Senator, I think with respect to the use of lethal force by any means, one would always want to look at the law enforcement issues involved there. And certainly, if you could provide more context there, I could place it in the scope of either a case or an issue that I might have familiarity with.

Senator CRUZ. Ms. Lynch, it is in the nature of a hypothetical. But you are certainly aware that the Federal Government is currently using drone strikes overseas.

The Federal Government also maintains drone surveillance domestically here at home. This Senate had an extended debate on the limits of Federal Government authority with respect to the privacy and civil rights of American citizens.

And I am asking you, in your view, does the Constitution give any protection to American citizens? Does the Constitution allow the Federal Government to do what it has done overseas, utilized lethal force from a drone, could it do so against an American citizen here at home if that individual did not pose an imminent threat?

Ms. LYNCH. Senator, with respect to the use of, as I said before, of lethal force by any means, be it drone or someone on the street, the use of lethal force is generally regulated by either police guidance or by the nature of the interaction.

Based on what you were describing to me, I do not see interaction between the American citizen that you are referring to and anyone to generate the type of lethal force that you are referring to.

Senator CRUZ. I am disappointed that like Attorney General Holder, you are declining to give a simple, straightforward answer and, in fact, what I think is the obvious answer of “no,” the Federal Government cannot use lethal force from a drone to kill an American citizen on American soil if that individual does not pose an imminent threat.

I do not view that as a difficult legal question and, indeed, it demonstrates what I think has been the consistent failing of this administration’s approach to constitutional law is that it always, always, always opts in favor of Government power.

Let me ask you a different question. This administration’s Department of Justice went before the United States Supreme Court and argued that law enforcement could place a GPS on any American citizen’s automobile with no probable cause and no articulable suspicion.

In your legal judgment, is placing a GPS on the automobile of the men and women gathered here with no probable cause or articulable suspicion, is that consistent with the Fourth Amendment’s protections of American citizens?

Ms. LYNCH. I believe the Supreme Court has resolved that issue, Senator, and I believe that law enforcement agencies seeking to use that type of technique would need to obtain a warrant.

Senator CRUZ. You are correct. The Supreme Court resolved that issue. It resolved it unanimously, 9-0. It rejected the Holder Justice Department’s position.

My question is, if you were Attorney General at the time, would you have agreed with that argument that law enforcement can place GPSs on any American citizen’s car?

Ms. LYNCH. Well, certainly, Senator, I was not involved in the legal analysis or discussion then. Based upon the practice prior to the Supreme Court argument and the fact that law enforcement had used various techniques, this was a new technique that was being evaluated and had been used in a variety of ways.

So my understanding was that after a careful consideration of precedent and practice, the Department made a strong argument. The Supreme Court has reasoned and has ruled that a warrant is required, and certainly that is the law of the land.

Should I be confirmed as Attorney General, that is certainly the practice that I would follow.

Senator CRUZ. The Obama Justice Department 22 times has gone before the Supreme Court arguing for broader Government authority and 22 times it has been unanimously rejected, 9-0, the Court has rejected those claims.

Another case was a case called *Hosanna-Tabor*, where the Obama Justice Department argued before the Supreme Court that the First Amendment has no relevance, says nothing about whether a church may select its own ministers or pastors.

Do you agree with that position that was put forth by this Justice Department?

Ms. LYNCH. Well, Senator, I have not read the briefs on that, so certainly I am not aware of the full articulation of that position. But I believe the Supreme Court has spoken and has resolved that issue.

Certainly, should I be confirmed as Attorney General, I would follow that precedent.

Senator CRUZ. You are correct again. The Supreme Court resolved that 9-0, rejecting the opinion. And I would note Justice Elena Kagan, an appointee of this President, said from the bench in that argument to the Department of Justice's lawyer, "I find your position amazing that the Justice Department would argue the First Amendment does nothing, says nothing about a church's ability to appoint its own ministers and pastors."

Let me ask you. If you are confirmed as Attorney General, will you commit to this Committee to provide greater scrutiny to the positions the Justice Department takes before the Supreme Court and, in particular, to stop the practice over and over again of advocating for broad Government power, which has resulted in 22 times the Supreme Court unanimously rejecting that argument?

Ms. LYNCH. Senator, should I be so fortunate as to be confirmed as Attorney General, I will take every case that comes before the Department of Justice seriously. I will consult with the career prosecutors there, also within the Solicitor General's Office, on the facts of the case, the relevant law, and, in conjunction with them, provide my best judgment as to the approach to take.

Senator CRUZ. Is it your understanding of the role of the Attorney General that the Department of Justice should always advocate greater Government power?

Ms. LYNCH. Senator, my view is that the Department of Justice advocates to defend statutes as passed by Congress and that its greatest function is to represent the American people.

With respect to specific cases, again, I will always do as I have done throughout my career as a lawyer, I will carefully examine the facts of the case, the relevant law, precedent, and make the best reasoned argument that there is to support the position that is being advocated.

Senator CRUZ. Let us shift to another area where this Department of Justice has not been, in my view, faithfully enforcing the law.

In May of 2013, the Inspector General of the Treasury Department concluded that the IRS had wrongfully targeted citizen groups for their political views.

When that news broke, President Obama publicly said he was outraged. He said he was angry and he said the American people had a right to be angry.

Ms. Lynch, do you agree with what President Obama said then, that the American people have a right to be angry at the IRS targeting citizens for their political views?

Ms. LYNCH. Senator, my view is that political views or bias have no place in the way in which not only the Department of Justice, but all agencies carry out their duties. And, certainly, when people hear of something that raises that issue, I can understand their concerns.

Senator CRUZ. In the nearly 2 years that have transpired, the individual who led the IRS office in question, Ms. Lois Lerner, has testified twice before Congress and has pleaded the Fifth, which, as you are well aware, means she raised her hand and said, "If I answer your questions, it means I may incriminate myself in criminal conduct."

In the nearly 2 years since that time has transpired, not a single person has been indicted. In the nearly 2 years since that time has transpired, many of the victims of the illegal targeting have yet to be interviewed by the FBI or the Department of Justice. And in the nearly 2 years that have transpired, we have discovered that the Department of Justice appointed to lead the investigation a partisan Democrat who has been a major donor to President Obama and the Democratic Party. Indeed, she has given over \$6,000 to President Obama and the Democratic Party.

In your view, is it consistent with fairly and impartially enforcing the law to have an investigation into the abuse of power by the IRS headed by a major Democratic donor?

Ms. LYNCH. Senator, my understanding of that investigation is really from public records. I am not familiar with the specifics of it.

I can certainly tell you that complex investigations often do take several months, if not a year or more to resolve, and I do not know the status of the witness interviews at this point. So I am not able to provide you information on that point that you raise.

With respect to how an investigation is staffed, again, I believe that while I am not familiar with the details of this, certainly my view is that the Department has career prosecutors who are devoted to the Constitution and to the fair and effective exercise of their judgment and that the Department has made the decision as to how to best staff the case and make the case.

I am just not able to comment on the length of time or other issues that you raise. Certainly, should I be confirmed, I look forward to learning more about the matter and as I have said before, Senator, I appreciate your raising concerns with me and I hope that you will continue to do so, should I have the opportunity to work with you in the future.

Senator CRUZ. One of the terrific things about the Department of Justice is that it has a long and bipartisan tradition of remaining above the fray from partisan politics, of demonstrating a fidelity to law. So that when serious accusations of abuse of power and, in fact, of abusing the IRS were raised against Richard Nixon, his Attorney General, Elliot Richardson, a Republican, appointed an independent counsel to investigate those allegations free of any tainted propriety or partisan bias.

Likewise, when serious allegations of wrongdoing against William Clinton were raised, his Attorney General, Janet Reno, a Democrat, made the same determination to appoint an independent counsel, Robert Fiske, to investigate the matter free of partisan, bias, or taint.

The question I would ask you, if you were confirmed as Attorney General, would you commit to this Committee to appoint a special prosecutor to investigate the IRS abuse of power who, at a very minimum, is not a major Obama donor and who can be counted on

to actually investigate the facts and follow them wherever they may lead?

Ms. LYNCH. Senator, again, I am not familiar with the investigation in great detail at this point. My understanding is that that matter has been considered and that the matter has been resolved to continue with the investigation as currently set forth.

Should I be confirmed as Attorney General, I can commit to you that I will take seriously every allegation of abuse of power brought to my attention and, in conjunction with career prosecutors and this body, where appropriate, make the best decision about how to handle that investigation.

Senator CRUZ. Ms. Lynch, you are correct that the matter has been considered. Indeed, I sent a letter to Attorney General Holder laying out the facts and asking him to follow the bipartisan tradition of his predecessors and uphold the rule of law, and he responded in writing that he was declining to appoint a special prosecutor and the basis of his declining to do so as the "discretion of the Attorney General."

So despite the internal DOJ rules that require recusal if there is even an appearance of bias, the Attorney General refused to appoint a special prosecutor.

You have stated you are not familiar with this investigation. I think that is unfortunate, because when you and I visited over a month ago in my office, we talked about this investigation. I told you it was a very serious concern of mine and I asked before your hearing if you would take the time to familiarize yourself with what had occurred. And yet your answer today is that you are not aware of what is happening.

Let me ask a more general question. Would you trust John Mitchell to investigate Richard Nixon?

Ms. LYNCH. You are referring to former Attorney General Mitchell?

Senator CRUZ. Yes.

Ms. LYNCH. Again, Senator—again, based on that hypothetical, I would have to know what the issue was and what you were requesting him to do.

Senator CRUZ. Would you trust John Mitchell to investigate the allegations of wrongdoing in the break-in at Watergate against Richard Nixon? Would you trust John Mitchell, who had run Richard Nixon's campaign, to investigate the allegations that ultimately led to Richard Nixon resigning the presidency?

Ms. LYNCH. Well, I think that matter has been resolved.

Senator CRUZ. Indeed.

[Laughter.]

Ms. LYNCH. And certainly with respect to how that matter should have been handled and Attorney General Mitchell's involvement in it, I believe his role in it has been resolved, as well.

So I am sorry, I am just not able—I do not think I am understanding the basis of your question, sir.

Senator CRUZ. Ms. Lynch, there are many of us who are alumni of the Department of Justice, who have most respected the Department when it demonstrated independence from the President, when the Department was willing to stand up to the President, when the Attorney General behaved not as if he or she were the

personal lawyer for the President who appointed them, but rather when the Attorneys General in both parties have behaved as independent, impartial law enforcement officers who owe a fidelity to the Constitution and the laws.

Prior to becoming Attorney General, Eric Holder had a reputation as a U.S. Attorney of upholding the law, and I was hopeful when he was appointed that he would carry that reputation forward as Attorney General. It has saddened me greatly that he has not done so.

And I will say it is disappointing in this hearing that, try as I might, there has been nothing I have been able to ask you that has yielded any answer suggesting any limitations whatsoever on the authority of the President. That does not auger well for this Committee's assessment of your willingness to stand up to the President when the Constitution and the laws so require.

Do you agree with that characterization?

Ms. LYNCH. Senator, as I have indicated before, I believe that the role of the Attorney General is to provide their most objective, well-researched, independent legal advice to the President or any agency who may come before them with a request for an opinion and where there is a legal basis for the request being made, to indicate so; but where there is not, to also tell the President or any other executive agency that what they are asking for is not within the framework of the law.

I believe that that is the role of the Attorney General. I believe the Attorney General must represent the people of the United States and, should I be so fortunate as to be confirmed, they will be my client and they will be my first thought.

Senator CRUZ. The "they" that you refer to as your client, just for clarification, to whom did the "they" refer? I am sorry.

Ms. LYNCH. "They" refers to the American people.

Senator CRUZ. And yet, and I will ask again, can you articulate any limitations on the authority of the President that, as Attorney General, you would be prepared to stand up and tell the President "no, there is some modicum of power you do not have"?

Ms. LYNCH. Senator, I believe that the role of the Attorney General does encompass the role of advising the President of when actions do not have the appropriate legal framework and when they may not be undertaken. That is something that I believe is an important part of the functions of the Attorney General and, certainly, should I be so fortunate as to be confirmed, is something that I would not hesitate to do.

It is part of the function of the Attorney General, even though a Cabinet member, to be independent of the President and to provide their best independent legal judgment on any issue presented to them.

Senator CRUZ. Well, I hope that you will very much carry through on that. It is discouraging that in the course of this hearing you have been unwilling to say that the President lacks the authority to refuse to enforce tax laws, labor laws, environmental laws, immigration laws; that you have declined to say that the President cannot order a drone strike on an American citizen on U.S. soil; and that you have refused to commit to a fair and impartial investigation of the IRS abuse of power by a special prosecutor.

I hope, if you are confirmed, that your conduct in office differs from the answers you have given at this hearing.

My time has now expired. I see Senator Leahy is here. So I recognize Senator Leahy.

Senator LEAHY. I see Senator Tillis here, too. I will withhold my time.

Senator TILLIS. Thank you, Senator.

Ms. Lynch, I wanted to go back to—and I do apologize for all of this cycling. If you saw all the activity over in the Senate chamber, you know what we are going through. It is certainly not for a lack of interest in this important topic.

But I want to go back to the idea of the limited resources within the DOJ and some matters. I would like to get some sense that, if you should be confirmed, that you would take a look at and potentially reconsider some of the priorities of the current Attorney General, and I will give you one example.

In North Carolina, we did change the election law, early voting. We went from 17 days to 10 days. In that law, though, we made it, by law, you could never offer fewer hours of early voting than the highest number that you ever offered in that particular county.

And what that had the effect of, in this last election cycle, is historic turnout even among minorities. So we have got a lawsuit filed by this Department of Justice, where I am named in it, questioning that, but then we have 12 States that have no early voting whatsoever, and I am wondering why.

It seems to be inconsistent when you have one State that is preserving the most that it has ever had before, other States that have never offered it, and in a time of limited prosecutorial resources, that we would actually allocate that way.

Given all that has been said today about the limits of resources and the need to allocate them to their best and highest use, can you give some sense of your thinking on that?

Ms. LYNCH. Well, Senator, with respect to the current litigation that has been filed, I have not been involved in it to date. I do know that it is proceeding through the courts and I believe there will be further action this summer. There may be a trial, I am not sure.

And so I think we will have to wait and see the judicial determination on the impact of the changes in the North Carolina State law.

As I indicated earlier, States obviously have grave interest and a great interest in both preserving the right to vote and protecting the integrity of the vote, and many of them do so in ways that are effective throughout several States.

The Department of Justice will always have a concern if the matter is raised as to whether or not there is a negative impact, that is to say, a foreclosing of the right to vote, and certainly people can differ on the impact that will be had and that will always be the issue in a case to be brought along those lines. And certainly nothing—I do not believe anything would have been personally aimed at you, sir.

So with respect to that, when the issue is whether or not a change in statutes somehow infringes up on this, our most important right, it is something that the Department of Justice will al-

ways review. But certainly, sir, I look forward to having discussions with you about the nature of not this case that is under litigation, but other matters in which the Department is taking an interest and getting views of you and others on this Committee on them.

Senator TILLIS. I think it is very important, because should you be confirmed, I think, again, I think we will always be in this state of not enough resources for all the things that we want to do and it just seems to me that this may be one example where, if you looked objectively at the Supreme Court case—States that are doing everything that they can to respect and promote a citizen's right to vote—that to spend our additional time and resources re-prosecuting laws does not seem to be the best use of resources in the context of the limited resources that we have discussed and several Members on this panel have discussed today.

And I would look forward, should you be confirmed, to having a discussion with you about how we can be sure that we are putting it to the best purposes for the good of the American people that you are trying to serve or that you will try to serve.

Ms. LYNCH. Thank you, sir.

Senator TILLIS. Thank you.

Chairman GRASSLEY. Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman. It is an honor to serve with you and also to serve with our former Chairman, and I appreciate the opportunity today.

I just want to pursue, to me, some legal rights here. It seems to me that if there are two people applying for a job as a truck driver, one is a lawful immigrant or a citizen and another is not, under the President's order, the person unlawfully here magically, at this moment, becomes eligible to compete against an unemployed American truck driver, and I think that is bizarre.

And the idea that there are rights that might attach to someone who is here unlawfully to take jobs from Americans under difficult working conditions, as we are today, is antithetical to common sense.

So I think that we—somebody needs to be asking themselves who is protecting the American worker, the people who are paying the salaries of you, the President and all of us, and, as a matter of law, the people who elect us or the people we are most directly accountable for, and that is the citizens of the United States.

So I am worried about that. What kind of lawsuit, what kind of claim—have you thought about this—that might somebody who loses out to a person who claims that they are legal to work now because of the President's order and they did not become a truck driver and the person that was recently legalized did get the job?

Ms. LYNCH. Well, Senator, at the outset, I do want to state that it is my understanding that—and there is no right to work for an undocumented immigrant in the country. So they would not have the right to work.

Senator SESSIONS. Well, they would under the President's order, would they not?

Ms. LYNCH. For those people who can obtain documentation, be it a green card or a visa or other cards, they would have the ability to apply for positions.

With respect to——

Senator SESSIONS. Could I ask you about that? The President is going to give work permits to 5 million. They would be, under his theory, entitled to work. He would have created 5 million persons to compete against 5 million Americans for a limited number of jobs, right?

Ms. LYNCH. Senator, I believe that if the process were to be implemented, as what I reviewed, there would be criteria set up for people to apply for work permits. They would apply. There would have to be a decision as to whether or not they would receive them and then I do not know what level of employment they would be able to apply for, but assume they could apply for positions.

Senator SESSIONS. Well, the estimates are, I think, from the White House, it would be as many as a total of 5 million and they would be given work authorization, photo IDs, Social Security numbers, and the ability to participate in Social Security and Medicare.

Are you aware—and to me, I find no lawful basis for this. And as the Attorney General and the person who supervises the Office of Legal Counsel, whose opinion you have basically affirmed here today, then you become, in a sense, the point person for this effort.

And some have suggested, well, it is Homeland Security, but Homeland Security asked your Department, Attorney General Holder's Department, the Office of Legal Counsel for an opinion that would allow them to do so.

So in effect, had the Department of Justice said no, that this is not appropriate and cannot be justified, Homeland Security would have been bound by that rejection, would it not?

Ms. LYNCH. Homeland Security would have been bound by that opinion, as I believe they were with respect to the portion of their proposal to which the Office of Legal Counsel did say no, there was not a legal basis for another portion that they sought to implement, and I believe they did not implement that.

With respect to the deferral——

Senator SESSIONS. I am only talking about what they did agree to. That apparently would be to create this new number of workers.

Well, are there plans to—what if somebody not in the 5 million is arrested for speeding next week, would they be deported?

Ms. LYNCH. Well, Senator, I do not know how the Department of Homeland Security would manage the removal. Certainly, a criminal record, if, were there to be an arrest and a conviction, would place someone in jeopardy of losing their deferral status if that is what they initially had.

Senator SESSIONS. Well, the point is that you are not going to deport any of the 7 million either. That is the policy that has become clear in the last few years. And so the administration, I would suggest, quite plainly is nullifying American immigration law to a degree that is breathtaking, in effect.

For example, you are saying that not only will we not find the resources, ask for the resources, nobody has asked for more resources to enforce the law if they need them; the President is not asking for it because he has no intention, if it were given to him, to use that money for that effect.

So that is the problem we have got. That is why the American people are wondering who is going to defend them, who is going to

defend their children who are out trying to find a job. African Americans, who have the highest unemployment rate among young people, the data is clear.

This large flow of immigration at this time of lower employment is hurting the poor the most.

So I would say to you that I am not raising this just to make an argument about what kind of immigration policy we need. I am raising this as a constitutional and legal question of incredible importance.

As I read to you, professors have said this is perhaps the greatest presidential overreach in history. The Congress refused to pass what the President wanted to do.

I am not saying that you made that decision, you did not. But your Department gave the legal opinion that justified it after he 28 times said he did not have authority to do it. Really an amazing event.

So, Mr. Chairman, I respect the nominee. She has got a good family I know was raised right, and I appreciate that.

Maybe you are just in a difficult position that is not necessarily your fault, but I am not satisfied that we at this point in history can just slide by and let this go.

I think we need to confront this issue as a Congress that needs to use the powers that it has to defend its legitimate rights under the Constitution, and that is why I have difficulties with your nomination.

I respect you and appreciate your appearance today and your willingness to answer questions.

Chairman GRASSLEY. Let me, before I go back to Senator Tillis for 3 or 4 minutes, call on Senator Hatch. But let me assure everybody that Senator Tillis, Senator Leahy, I have got a couple requests of you, and then I think we are done.

Senator LEAHY. Thank you. And another roll call vote has started and I will be leaving soon. I am sorry there have been so many questions that really have nothing to do with your qualifications.

You were shown a book and told it is terrible what is happening, the implication being something this administration did. The prosecution of Ted Stevens, of course, the last administration did that. This administration exonerated him.

Be that as it may, we talk about immigration, we have had millions of people here but every administration knows you cannot just remove 10 or 12 million people. President Reagan and both President Bushes, they have all taken that same position.

As far as jobs are concerned, the Chamber of Commerce strongly supported the immigration bill that this Committee passed two years ago and that the Senate passed by a bipartisan majority. Grover Norquist, a very conservative economist, said it would add billions of dollars, hundreds of billions of dollars to our economy and would increase jobs—not decrease them.

I wish the Speaker of the House had allowed it to come to a vote over in the other body; it would have passed. But that is not an issue for you. The issue is: Are you qualified to be Attorney General? I have seen a lot of Attorneys General in the 40—now going on to my 41st—years that I have been here. Some were very good, in both parties.

I think of Ed Levy, for example, in Gerald Ford's administration—I remember one, that all my Republican colleagues voted for him. But when he was here before this Committee and asked questions, we gave him 50 or 60 of the questions in advance, and he answered 70 to 75 times, "I do not know the answer," or, "I am not sure, I cannot answer that," even though he had had the questions weeks in advance. They voted for him.

I must say that I cannot think of anybody in all these years I have been here that struck me so much as being qualified to be Attorney General as yourself. I said earlier you are a prosecutor's prosecutor.

I think of the Attorney General as the Attorney General of the United States, there for all of us. I referred to my days as a young law student being recruited by then-Attorney General Robert Kennedy, but I was just too homesick for Vermont so did not stay. I am not going to ask further questions because I am satisfied with what you said so far.

You will have my vote, you have my strong support, and I hope in the remaining part of this administration that you will be there to enforce the laws of the United States.

Thank you, Mr. Chairman. I have nothing further to say. I will put the rest of my statement in the record.

Ms. LYNCH. Thank you, Senator.

Chairman GRASSLEY. Senator Tillis.

Senator TILLIS. Thank you, Senator. I apologize, I should have taken care of this question. But my final question, Ms. Lynch, is really around the philosophy that you may bring to the Department of Justice. In December 2014, the Government Accountability Office issued a report that was titled, "The Department of Justice Could Strengthen Procedures for Disciplining Its Attorneys."

There were a couple of examples, going back to even, I think, the handling of New Orleans police officers related to the Hurricane Katrina, where there was either misconduct or they had perjured themselves. Would you agree with me that the Department of Justice employees who had engaged in this sort of activity, either through prosecutorial misconduct or through perjuring themselves in court, are they the kind of personnel that you would allow to continue to be employed in the DOJ?

Ms. LYNCH. Certainly, Senator, with respect to personnel issues, I take very seriously the integrity of every member of my staff, and if confirmed as Attorney General would also take very seriously the professionalism of the members of all the staff of the Department of Justice, all of whom I have found it to have been a privilege and a pleasure to work with and to be dedicated career professionals and dedicated to not just improving their skills, but the highest standards of professional conduct.

When they cross a line, they are dealt with and that will continue to happen, should I be confirmed as Attorney General. But I will say that with respect to the staff and the attorneys at the Department of Justice, they are some of the most effective and professional individuals that I have had the pleasure to be affiliated with.

Senator TILLIS. Well, should you be confirmed, since this report was just dated last month, I hope that it is something that you

would take into account as you go into the organization and look at the resources that you have inherited responsibility for.

Ms. LYNCH. Yes.

Senator TILLIS. Thank you. Thank you very much. And thanks to the family, in particular. I know it is a long day and those seats are not that comfortable, so thank you all.

And again, congratulations on the honor that you have from the President's nomination. Thank you very much.

Ms. LYNCH. Thank you, Senator.

Chairman GRASSLEY. I have changed my mind. I am not going to ask you two questions, I am going to submit them, along with some other questions, for you to answer in writing. I thank you very much for being patient today.

It has been a long day and I suspect some Members of the Committee were more impressed with your answers than others.

We are going to recess for the day and have our second panel tomorrow. I hope you will count yourself lucky, let us say, compared to Judge Mukasey. When he testified, he was forced to come back for a second day of questions.

Finally, I would like to note that after tomorrow's panel I am going to give everyone one week to submit questions for the record. That is standard practice in this Committee. Once again, thank you for being so patient and putting up with the chaos that I formerly referred to.

Thank you. We are recessed now. Thank you.

Ms. LYNCH. Thank you, Senator.

[Whereupon, at 5:50 p.m., the Committee was recessed, to reconvene at 10:00 a.m., Thursday, January 29, 2015.]

[Additional material submitted for the record for Day 1 follows Day 2 of the hearing.]

**CONFIRMATION HEARING ON THE
NOMINATION OF HON. LORETTA E. LYNCH
TO BE ATTORNEY GENERAL
OF THE UNITED STATES**

THURSDAY, JANUARY 29, 2015

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in Room SH-216, Hart Senate Office Building, Hon. Charles E. Grassley, Chairman of the Committee, presiding.

Present: Senators Grassley, Hatch, Sessions, Graham, Cornyn, Lee, Cruz, Flake, Vitter, Perdue, Tillis, Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, and Blumenthal.

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Chairman GRASSLEY. For the Members who are present, except for the ones that were here already, it will be on seniority, and then other people that come in, you will be called on according to how our respective staffs keep track of you in the order of your appearance.

Before Chairman Leahy and I give our opening statements, I would like to go over some things that I said yesterday.

First of all, we welcome everybody back to this second day of the hearing on Ms. Lynch's nomination to be Attorney General. As I said yesterday—and everybody abided by this, and I want to thank everybody that was here yesterday for their courtesy—I want everyone to be able to watch the hearing without obstruction. And if people stand up and block the view of those behind them or speak out of turn, it is not fair or considerate to the others. So officers would remove those individuals, and that is what I want to thank, because we did not have any of those incidents yesterday.

Before we begin the opening statements, I will take care of a couple of housekeeping items and explain the process.

First of all, I want to thank everyone for their patience yesterday. It looks like we are going to have more floor votes today, so, again, I am asking for your flexibility.

After opening statements, the plan is to start the first round of questions, then recess so Members can vote. We would then return after the first series of stacked votes, and I am assuming that is going to be around 12:45. But you folks that are answering questions for us, you cannot necessarily count on that. But then we will

keep going through the—there are four votes this afternoon. We will not adjourn at that particular time. We will do like we did yesterday. We will take turns going and voting.

Senator Leahy and I will now give our opening statements. Then we will turn to our witnesses for their opening statements. Following their statements, we will begin with the first round of questions in which each Senator will have 10 minutes. After the first round, then we will go to 8 minutes of questions. And so then I will give my opening statement.

Obviously I welcome everybody, the audience as well as witnesses, to our second day of hearings on Ms. Lynch's nomination to be Attorney General. Yesterday we heard from the nominee. I thought she was very engaging, very confident. There is no question about her competence from what she has done as far as her legal background and her work as U.S. Attorney.

We appreciated her willingness to stay here through it all so we could get done with her in one day and everybody that wanted to ask questions verbally could do it. Of course, there are going to be a lot of questions in writing for her to answer in time.

She is clearly a skilled and competent lawyer. We asked questions yesterday, but I have to say, at least from my standpoint—I am not speaking for any other Member—it seemed like indirect answers. So I suspect that those will be followed up with questions for the record.

Today we will hear this second panel in front of us right now. Many of these will speak to the many ways the Department of Justice, under its current leadership, has failed to fulfill some of the most basic aspects of its mission. The question for me and lot of Members on this side is whether Ms. Lynch is committed to leading the Department of Justice in a new direction. There are obviously people here that are going to speak about the direction of the Department in a different way, and we will listen courteously to that as well.

We will hear from Sharyl Attkisson, as one example of a person who was an investigative journalist who has been bullied, threatened, and literally blocked from entering the Department of Justice, because she had the guts to report on issues like Fast and Furious and Benghazi. That is one example of something we would like to have a new Attorney General fix.

We will also hear from Catherine Engelbrecht who was targeted by the IRS simply because she is a conservative who has had the courage to stand up in defense of freedom and the Constitution. The Department has paid lip service to the investigation that it is supposedly leading. So I would like to know how Ms. Lynch will take seriously the targeting of fellow citizens based on their political views.

Then we have Sheriff David Clarke, from Milwaukee, who will testify about how thousands of local law enforcement officers across this country feel as though the current leadership does not fully appreciate the work that law enforcement does every day. So that is important to see how Ms. Lynch might mend the broken relationship.

And then we will hear from Professors Turley and Rosenkranz, who will address how the Department of Justice under Eric Holder

has rubberstamped the President's lawless actions—from the unlawful recess appointments to the unlawful Executive action specifically on immigration.

So those people will bring up points that we have made not quite as directly as they have or personally as they have in hopes that Ms. Lynch will restore the Office of Legal Counsel to the impartial role it used to play as a check on the President's authority.

So I look forward to the hearing today, and now it is Senator Leahy's turn to give his opening statement.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Senator LEAHY. Well, thank you, Mr. Chairman. This is the second day of the Committee's consideration of Loretta Lynch to serve as our Nation's Attorney General. We had a long day here yesterday. Today we will hear testimony from outside witnesses about Ms. Lynch. I would especially be interested in the testimony from those who actually know her.

Yesterday we heard directly from her. Over nearly 8 hours of testimony, she testified about the values and independence she would bring to the office of the Attorney General. She testified how she would make as priorities national security and public safety but still preserve the values that we Americans, I hope all of us, hold dear.

I was encouraged when Republican Senators on the Committee agreed with me that the key question for voting for a nominee to be Attorney General is independence. Some of us remember a past Attorney General who told us he was a member of the President's staff, and we all had to remind him, no, he is not; he is not like the Secretary of Justice. He is the Attorney General of the United States and is supposed to be independent. Responding to questions on issue after issue, it was clear that Ms. Lynch is an independent lawyer of strong character, balanced demeanor, and obvious abilities.

I also want to take a moment to thank Chairman Grassley for his handling of yesterday's hearing. It was no easy feat, especially when we had 18 votes, I believe it was, yesterday afternoon. He kept it going. He made sure that every Senator who had a question on either side of the aisle was given the time to ask their questions and be heard, and I commend him for that. I appreciate the tone of this hearing.

Chairman GRASSLEY. Thank you.

Senator LEAHY. But I was not surprised at the fairness. We have been friends for decades, and I know you well.

We are going to hear from law enforcement officials who actually worked with Ms. Lynch. These are the people who have the best knowledge of her. They strongly support her nomination. Their presence today will speak to the support Ms. Lynch has among both Republicans and Democrats. Similarly, one of the finest FBI Directors we have ever had, Louis Freeh, has submitted a letter of support on her behalf.

Now, Barack Obama is not the nominee. That may come as a surprise to some who heard some of the questions. Eric Holder is not the nominee. Loretta Lynch, the daughter of Lorine and the

Reverend Lorenzo Lynch, a U.S. Attorney twice unanimously confirmed by the United States Senate, one who has been applauded for her law enforcement work, that is who we are being called upon to consider. I am confident that, after hearing her testimony before this Committee and after reviewing her record, no one in good faith could question her integrity or her ability.

She said yesterday she looks forward to working with Congress to confront the many issues facing Americans today, and she has met with over 50 Senators in both parties. So I hope we can come together in the Senate and support this historic confirmation of an outstanding public servant and to move quickly in doing it.

Thank you.

Chairman GRASSLEY. Can I ask you, there is no reason to make these people stand for an oath, is there? Can't they do it sitting down?

Senator LEAHY. Sure.

Chairman GRASSLEY. Okay. I would like to—

Senator LEAHY. Do whatever you wish.

Chairman GRASSLEY. Well, I want to know what is legal.

Senator LEAHY. It is okay with me.

Chairman GRASSLEY. Do you affirm that the testimony— would you raise your hand, please? Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. ATKISSON. I do.

Mr. BARLOW. I do.

Reverend NEWSOME. I do.

Ms. FEDARCYK. I do.

Professor LEGOMSKY. I do.

Professor TURLEY. I do.

Sheriff CLARKE. I do.

Professor ROSENKRANZ. I do.

Ms. ENGELBRECHT. I do.

Chairman GRASSLEY. Thank you.

Now I am going to introduce everybody at the table all at once instead of separately when one person gets done speaking, so be patient with me.

Sharyl Attkisson is an investigative journalist and author. For over 20 years, she worked for CBS News, winning multiple Emmy awards for her investigative journalism pieces, including her reporting on the 2012 Benghazi report and *Fast and Furious*.

Next we have David Barlow, whom we know well. Mr. Barlow served as U.S. Attorney for the District of Utah, 2011–2014. Prior to his tenure as U.S. Attorney, Mr. Barlow served on this Committee as Senator Lee's chief counsel. He is now a partner of Sidley Austin, Washington, DC.

Next is Reverend Newsome. Reverend Clarence Newsome is president of the National Underground Railroad Freedom Center in Cincinnati, Ohio.

Next is Janice Fedarcyk. Ms. Fedarcyk served as Assistant Director in Charge of FBI's New York Division, 2010–2012. Ms. Fedarcyk currently runs Fedarcyk Consulting, Washington, DC. I know I pronounced it wrong.

Next we have Stephen Legomsky, John S. Lehmann University Professor at Washington University School of Law.

Next we have Jonathan Turley, J.B. and Maurice C. Shapiro Professor of Public Interest Law, George Washington University Law School.

David Clarke is sheriff, Milwaukee County, and has served for over 36 years as a law enforcement professional.

Next, Nicholas Rosenkranz is a professor of community law and Federal jurisdiction, Georgetown University Law Center, and a senior fellow at the Cato Institute.

Finally, we have Catherine Engelbrecht. Ms. Engelbrecht is the founder and chairwoman of True The Vote, an election integrity organization; the founder of King Street Patriots, a citizen-led liberty group; and the co-owner of Engelbrecht Manufacturing, a small business she owns with her husband in her home State of Texas.

Now we will start with Ms. Attkisson.

**STATEMENT OF SHARYL ATTKISSON, INVESTIGATIVE
JOURNALIST, LEESBURG, VIRGINIA**

Ms. ATTKISSON. Thank you.

Chairman GRASSLEY. Oh, if I did not, maybe I should say—I think you have all been informed, but we would like to have 5 minutes.

Ms. ATTKISSON. Yes.

Chairman GRASSLEY. Okay. Go ahead.

Ms. ATTKISSON. I have been a reporter for 30 years at CBS News, PBS, CNN, and in local news. My producers and I have probed countless political, corporate, charitable, and financial stories ranging from Iraq contract waste and fraud under Bush to green energy waste under Obama to consumer stories relating to the drug industry.

Some of these reports have been recognized for excellence in journalism—most recently, investigative Emmy nominations and awards for reporting on TARP, Benghazi, green energy spending, Fast and Furious, and a group of stories including an undercover investigation into Republican fundraising.

The job of getting at the truth has never been more difficult.

Facets of Federal Government have isolated themselves from the public they serve. They covet and withhold public information that we as citizens own. They bully and threaten access of journalists who do their jobs, news organizations that publish stories they do not like, and whistleblowers who dare to tell the truth.

When I reported on factual contradictions in the administration's accounts regarding Fast and Furious, pushback included a frenzied campaign with White House officials trying to chill the reporting by calling and emailing my superiors and colleagues, using surrogate bloggers to advance false claims. One White House official got so mad, he angrily cussed me out.

The Justice Department used its authority over building security to handpick reporters allowed to attend a Fast and Furious briefing, refusing to clear me into the public Justice Department building.

Advocates had to file a lawsuit to obtain public information about Fast and Furious improperly withheld under executive privilege.

Documents recently released show emails in which taxpayer-paid White House and Justice Department press officials complained that I was “out of control” and vowed to call my bosses to try to stop my reporting.

Let me emphasize that my reporting was factually indisputable. Government officials were not angry because I was doing my job poorly. They were panicked because I was doing my job well.

Many journalists have provided their own accounts.

The White House made good on its threat to punish C-SPAN after C-SPAN dared to defy a White House demand to delay airing a potentially embarrassing interview with the President.

Fifty news organizations, including CBS and The Washington Post, wrote the White House objecting to unprecedented restrictions on the press that raise constitutional concerns.

A New York Times photographer likened the White House practices to the Soviet news agency TASS.

Former Washington Post Executive Editor Len Downie called the Obama War on Leaks “by far the most aggressive” he has seen since Nixon.

David Sanger of The New York Times called this “the most closed, control freak administration” he has ever covered.

New York Times public editor Margaret Sullivan said it is “the administration of unprecedented secrecy and unprecedented attacks on a free press.”

Months before we knew that the Justice Department had secretly seized AP phone records and surveilled Fox News’ James Rosen, before Director of National Intelligence James Clapper incorrectly testified under oath that Americans were not subject to mass data collection, I was tipped off that the Government was likely secretly monitoring me due to my reporting.

Three forensics exams confirmed the intrusive, long-term remote surveillance. That included keystroke monitoring, password capture, use of Skype to listen into audio and exfiltrate files, and more.

Getting to the bottom of it has not been easy. It is unclear what, if anything, the FBI has done to investigate.

The Justice Department has refused to answer simple, direct, written congressional questions about its knowledge of the case. It has stonewalled my Freedom of Information requests—first saying it had no responsive documents, then admitting to 2,500 of them but never providing any of them.

In 2013, Reporters Without Borders downgraded America’s standing in the global free press rankings, rating the Obama administration as worse than Bush’s.

It matters not that, when caught, the Government promises to dial back or that James Rosen gets an apology.

The message has already been received: If you cross this administration with perfectly accurate reporting they do not like, you will be attacked and punished. You and your sources may be subjected to the kind of surveillance devised for enemies of the state.

For much of history, the United States has held itself out as a model of freedom, democracy, and open, accountable Government. Freedoms of expression and association are, of course, protected by the Constitution.

Today those freedoms are under assault due to Government policies of secrecy, leak prevention, and officials' contact with the media, combined with large-scale surveillance programs.

The nominee, if confirmed, should chart a new path and reject the damaging policies and practices that have been used by others in the past.

If we are not brave enough to confront these concerns, it could do serious, long-term damage to a supposedly free press.

Thank you.

[The prepared statement of Ms. Attkisson appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Ms. Attkisson.

If I am accurate, Professor Rosenkranz, you have recently had a back operation and if you need to stand, we would not object. So whatever you have to do.

Now, Mr. Barlow.

Senator LEAHY. And I would echo that sitting here—recovering from two fractured vertebrae, I know how important it is to be able to stand.

Chairman GRASSLEY. Yes, okay. Mr. Barlow.

**STATEMENT OF DAVID B. BARLOW, PARTNER,
SIDLEY AUSTIN LLP, WASHINGTON, DC**

Mr. BARLOW. Thank you, Chairman Grassley, Ranking Member Leahy, Members of the Judiciary Committee. It is my privilege to appear before you here today in support of the nomination of my former colleague, Loretta Lynch, to serve as Attorney General of the United States.

I would be remiss if I did not first thank this Committee for the strong support I received in 2011 when my own nomination to serve as United States Attorney was before you. It was a tremendous honor to serve as U.S. Attorney in the Department of Justice. I always will be grateful for the trust that you reposed in me when you supported my nomination.

And it is now my privilege to recommend Ms. Lynch to you. You already have heard and read much about her storied 30-year legal career. So instead of elaborating on her many credentials, I want to take just a few minutes to share a couple of personal observations about my former colleague.

I first met Loretta at a conference of United States Attorneys several months after I was sworn in. And what I remember most vividly about her was the way she handled a portion of the program where U.S. Attorneys were asking questions of the Executive Office of United States Attorneys. Loretta moderated the session. Some of the discussion regarding budgets, resource allocation, hiring authority, and other issues understandably became intense as my colleagues and I argued our various views and articulated the many needs that our districts had during lean budgetary times.

But Loretta was calm and unruffled. She asked hard questions, but she did so in an unfailingly dignified and respectful way. Where strong feelings created the risk of bringing more heat than light to the conversation, Loretta brought only light. She was clearly tough, but also fair and gracious.

That impression of Loretta was confirmed and deepened as I served with her on the Attorney General's Advisory Committee, the AGAC. As you know, the AGAC is a committee of roughly a dozen United States Attorneys who serve as a voice of their colleagues to the Department of Justice and provide counsel to Department leadership on various management, policy, and operational issues. Loretta was the chair of the AGAC during the time that I served as a member of it.

You already know that United States Attorneys are not a timid group. All are accustomed to being in charge. All are used to expressing their views. And all are, at least in part, the products of very different backgrounds, experiences, and places. If you put twelve or so United States Attorneys together in a room, as the AGAC does, you will get a wide variety of ideas and perspectives, often very strongly held.

It takes someone very special to lead that kind of group. For the AGAC to work well, to work as it is intended, that someone needs to be smart, insightful, organized, articulate, inclusive, and experienced. Loretta was and is all those things and more. She was always well prepared. She made sure that all points of view were fairly and fully considered. She listened far more than she talked. She facilitated consensus wherever possible and made space for dissent when consensus could not be reached. And by her example and her conduct, she elevated the discourse and refined the exchange of ideas in our committee. Through these experiences, my initial impressions of Loretta Lynch were fully confirmed: She is tough, fair, gracious, smart, and independent.

In conclusion, during my time as United States Attorney, I had the privilege of serving with a truly outstanding group of U.S. Attorneys throughout the Nation. I learned much from them. I was inspired by their service and their commitment. But of all of these dedicated and talented public servants, the Honorable Loretta Lynch truly stood out. If confirmed by the Senate, I am sure she will make an excellent Attorney General of the United States.

Thank you.

[The prepared statement of Mr. Barlow appears as a submission for the record.]

Chairman GRASSLEY. I will turn to Reverend Newsome.

**STATEMENT OF REV. DR. CLARENCE G. NEWSOME,
CINCINNATI, OHIO**

Reverend NEWSOME. Mr. Chairman and Mr. Ranking Member and Members of the Judiciary Committee, it is my pleasure and honor to appear before you to support the nomination of Attorney Loretta Elizabeth Lynch for the position of United States Attorney General.

I have known Loretta virtually all of her life. Our family relationships cover a period of 40 or more years. Her family has been associated with several branches of my family by way of the Baptist Church connection and the network of educators in the great State of North Carolina. Her grandfather was a highly regarded and respected clergyman; the same can be said of her father and her brother, both of whom have been distinguished leaders at the State and the national level for some time. For many years her fa-

ther was a key leader in the life of the General Baptist State Convention of North Carolina and the National Baptist Convention, USA. Her brother continues in that tradition of leadership even now.

Her father and I have been ministerial colleagues since the 1970s. It was my privilege to teach her brother during the years that I served on the Duke Divinity School faculty. I have been able to maintain a warm personal association with her mother, an esteemed church leader and educator in her own right, for decades. Through her father, brother, and mother and mutual family friends, I have been able to stay abreast of Loretta's impressive and remarkable rise to a position of preeminent leadership in the life of our Nation.

Loretta is the product of one of the most outstanding families in the State of North Carolina. To the degree that virtue counts in our society, I am bold to say that she is the product of one of the most outstanding families in the United States of America. The members of the Lynch family are known for their exemplary character, integrity, excellent achievement, civic-mindedness, commitment to the common good, and deep and compelling sensitivity to the well-being of all people.

Over the years it has been my privilege to witness the development and emergence of the best of who we are as a Nation in the person of Loretta. In the religious, educational, and social circles in which our families have moved, she has had a reputation for being stellar in everything she has done. As a teenager, she drew the admiration of adults and, more significantly, her peers as well. She stood out among them without alienating herself from them. She stood out in many, many ways. She was as approachable then as she is now. Even then she enjoyed a reputation for being level-headed, balanced in her thinking, and wise in her judgments. She evidenced a level of maturity that was out of the ordinary but only in those ways that garner the respect of young and old alike.

As a teenager, Loretta was the daughter every parent would love to have. Early in life, the quality of her character was evident, and this is why the cities of Greensboro, where she was born, and Durham, where she graduated from high school with valedictory honors, claim her as a daughter who has made them proud. All the more proud we North Carolinians will be if she is appointed the first U.S. Attorney General in the State's history.

As a student during her pre-college years, she performed at such a high level that it only seemed natural that she would attend and graduate from Harvard University and Harvard Law School. In fact, her career trajectory is consistent with the extraordinary intellectual ability and prowess, discipline, and even courage she demonstrated during her youth. Early on she dared to dream to become the best of the best, and she has accomplished this in the field of law and jurisprudence. As her professional record shows, she has become the best of the best without qualification.

In the way that her career has taken shape, I can discern several attributes that are worth noting at a time such as this.

First of all, she is an informed, independent thinker who listens well and studies hard.

Second, she has the capacity to maintain the strength of her own convictions.

Third, she is morally grounded and highly principled.

Fourth, she acts decisively and judiciously.

And, fifth, she is a public servant of the highest order, the type that works well with others to bring about good results with positive outcomes.

Thank you very, very much.

[The prepared statement of Rev. Dr. Newsome appears as a submission for the record.]

Chairman GRASSLEY. Thank you very much, Reverend.

Ms. Fedarcyk.

**STATEMENT OF JANICE K. FEDARCYK, FEDARCYK
CONSULTING LLC, CROWNSVILLE, MARYLAND**

Ms. FEDARCYK. Chairman Grassley, Ranking Member Leahy, and Members of the Committee, it is my pleasure to appear before you this morning to speak about my association with the Attorney General nominee, Loretta Lynch. I wholeheartedly endorse her confirmation from the vantage point of someone who worked closely alongside Loretta in her role as United States Attorney of the Eastern District of New York during my 2 years as the Assistant Director in Charge of the FBI's New York office. I served in that capacity for 2 years, retiring in 2012 after 25 years of service in the FBI.

As the Assistant Director in Charge, I was responsible for the largest field office in the FBI, and inherent to that are the most complex and sensitive investigations in all of this Nation's law enforcement. New York was and will remain the target for the terrorism activities of individuals and groups that espouse their violent agenda. From the World Trade Center 1 in 1993 to the terrorist attacks of 9/11 and beyond, we continue to see this terrorist agenda manifested against New York. As a result, the FBI's resources and the considerable talents of the United States Attorneys in both the Eastern and Southern Districts of New York are almost in a daily undertaking to protect this Nation's security.

I think it is also important that the Committee appreciate the magnitude of the criminal violations the New York office worked. These violations ranged from the complicated and pervasive financial crimes, the insidious and debilitating effects of organized crime and public corruption, and the violence associated with national gangs and other violent offenders.

Given this challenging environment, it was a necessity to establish a substantial and seamless partnership with Loretta and her office. Over the course of the next 2 years, we formed an effective partnership to address not only the national security and criminal threats but also to engage in outreach and liaison to make a positive impact in the community.

The basis for my unquestioned support for Loretta's nomination is founded upon the numerous successes our offices achieved, the close professional and personal relationship that provided me extraordinary insight into Loretta both as a United States Attorney and as a person. I was privileged to observe her commitment to mission, her personal involvement in issues that invariably arose in our work, as well as those within the broader law enforcement

community. In supporting Loretta's nomination as the next Attorney General of the United States, I would like to comment on three areas that form the foundation of my recommendation: sound judgment, legal acumen, and independence.

In all of my interactions with Loretta, her approach to addressing and resolving issues invariably involved gathering information to understand the issue, obtaining inputs from affected stakeholders, and making a decision based upon the facts and the law. As you heard Ms. Lynch yesterday commit to a collaborative and deliberative approach, I can assure you based on my experience that she will follow through.

While not an attorney, I do recognize that Loretta was nominated and confirmed twice as a United States Attorney in the Eastern District of New York; served on the Attorney General's Advisory Committee and was named as chair of the committee in 2013; and received favorable reviews by the Executive Office for United States Attorneys which called her "exceptionally well qualified."

Lastly, I have never known Loretta to make a decision based upon politics or outside influences. She consistently demonstrated fairness, respect for others, and a deep sense of duty. Under her leadership, her office embraced those qualities in their work.

As I previously stated, our offices pursued a multitude of national security and criminal investigations, including the arrest of approximately 138 Mafia figures that represented the largest single-day operation against the Mafia in history. But other notable accomplishments spanned the spectrum of the national priorities and are examples of her successes in the Eastern District, including international terrorism, public corruption, gang violations, violent offenders, etc.

Ms. Lynch's recognition that task forces brought the best of inter-agency investigative resources to bear on entrenched crime problems was integral to broader and deeper successes than would have been the case for any one agency or department to achieve alone. These task forces included the Nation's largest Joint Terrorism Task Force, the Violent Gang Task Forces, the Long Island Gang Task Force, the Health Care Task Force, and the Financial Fraud Enforcement Task Force, to name just a few.

In closing, Abraham Lincoln said, "Character is like a tree and reputation like a shadow. The shadow is what we think of it; the tree is the real thing." Ms. Lynch is the real thing.

Thank you.

[The prepared statement of Ms. Fedarcyk appears as a submission for the record.]

Chairman GRASSLEY. Thank you very much.

Now, Professor Legomsky.

**STATEMENT OF STEPHEN H. LEGOMSKY, JOHN S. LEHMANN
UNIVERSITY PROFESSOR, SCHOOL OF LAW AT WASHINGTON
UNIVERSITY, ST. LOUIS, MISSOURI**

Professor LEGOMSKY. Thank you, Mr. Chairman and honorable Members of the Committee. Thank you for the privilege of testifying this morning. I am here to focus on the concerns that some have expressed about the President's recent Executive actions on immigration. I do sincerely appreciate that reasonable minds can

and do differ about the policy decision as to precisely what the enforcement priorities are to be.

But I want to respectfully share my opinion that the President's actions are clearly within his legal authority. That is not just my opinion: 135 immigration law professors and scholars signed a letter just this past November expressing that same view in strong terms. This is the mainstream view from those of us who have spent our careers teaching and researching immigration law.

The President has not just one but multiple sources of legal authority for these actions, and I have submitted a detailed written statement that documents each of these. The written statement also identifies every legal objection I could think of that the President's critics have offered and it explains why, in my view, none of them can withstand scrutiny. So, with limited time, I will hit just a few key points and refer you please to the written statement for all the other points.

First, I think all now agree that in a world of limited resources prosecutorial discretion is unavoidable. You cannot go after everyone so you have to prioritize.

In the case of immigration, Congress has made this explicit. It charged the Secretary of Homeland Security with "establishing national immigration enforcement policies and priorities"—priorities. That alone would seem to suffice. But, in addition, year after year Congress knowingly gives the administration only enough money to pursue less than 4 percent of the undocumented population. That to me is the clearest evidence possible that Congress intends for DHS to decide how those limited resources can be most effectively deployed.

In fact, Congress has specifically required DHS to prioritize three things: national security, border security, and the removal of criminal offenders. And those are exactly the three priorities that these recent Executive action memos incorporate.

On top of all that, we have the 2012 Supreme Court decision in *Arizona v. U.S.* where the Court struck down most of Arizona's immigration enforcement statute precisely because it would interfere with the Federal Government's immigration enforcement discretion, which the Court went on at some length to emphasize the breadth of.

Now some critics claim that if the recent Executive actions are legal, then that would mean there are no limits at all and therefore some future President could suspend enforcement of some other law.

But DACA and DAPA do not even approach the sort of hypothetical non-enforcement that that argument conjures up. If the President were to refuse to substantially spend the resources Congress has appropriated, then I believe we would have a serious legal issue. But that is not even close to the present reality, because even after DACA and DAPA are fully operational, the President still will have only enough resources to go after a small percentage. And so as long as he continues to use those enforcement resources that Congress has given him, it is hard for me to see how that could be called an abdication.

As for deferred action specifically, the program has been around for more than 50 years. Not only has Congress never acted to pro-

hibit it or even restrict it, Congress has affirmatively recognized it by name in several provisions. The formal agency regulations also recognize it by name. A long line of courts, including the Supreme Court, have recognized it by name. Not one of these legal authorities, not one, says or even intimates that it is legal if there is a small number of people but otherwise not.

The same is true for work permits. The statute authorizes DHS to grant permission to work, and the regulations specifically make deferred action recipients eligible for them.

Now, some have said deferred action is okay on an individual basis, but not for a whole class. First of all, nothing in the law actually says that. And in fact, almost every modern President has granted reprieves from removal and work permits to large, specifically defined classes of undocumented immigrants.

At any rate, the Secretary's November memo is filled with clear, careful, repeated instructions to officers that, even if the general criteria in the memo are all satisfied, they still have to make individualized, case-by-case discretionary judgments. And in fact, the very form that USCIS officers are required to use when they deny deferred action—and they have denied it more than 32,000 times on the merits—contains a list of the reasons, and one of those specific reasons listed is discretion.

I think this is the way an agency should work. It articulates general criteria and then expects its officers to use some judgment in applying those criteria to individual cases.

Thank you very much for your time.

[The prepared statement of Professor Legomsky appears as a submission for the record.]

Chairman GRASSLEY. Thank you. Professor Turley.

STATEMENT OF JONATHAN TURLEY, J.B. AND MAURICE C. SHAPIRO PROFESSOR OF PUBLIC INTEREST LAW, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, WASHINGTON, DC

Professor TURLEY. Thank you, Chairman Grassley, Ranking Member Leahy, Members of the Senate Judiciary Committee, I thank you for the honor of appearing before you at this historic moment in looking for the confirmation of the 83rd Attorney General of the United States.

I want to begin by saying I have great respect for Ms. Lynch. As I have said before, her extraordinary career as a prosecutor pays great credit to her and to her nomination. Indeed, if confirmed, and I hope she is, I believe that she could be a truly great Attorney General.

If great leaders are shaped at great moments in history, this could be such a moment for Loretta Lynch.

The Justice Department is at the epicenter of a constitutional crisis. A crisis that consumed her predecessor and his Department.

My focus, therefore, of my written testimony and my oral testimony today is less on Ms. Lynch than on the Department she wishes to lead. As my academic writings indicate, I have been concerned about the erosion of lines of separation of powers for many years and particularly the erosion of legislative authority of this body and of the House of Representatives. That concern has grown to alarm in the last few years under President Obama, someone

that I voted for, someone with whom I happen to agree on many issues, including some of the issues involved in these controversies.

We are watching a fundamental change in our constitutional system. It is changing in the very way that the Framers warned us to avoid. The Justice Department has played a central and troubling role in those changes. In my view, Attorney General Holder has moved his Department outside of the navigational beacons of the First and Second Articles of our Constitution. In that sense, Ms. Lynch could be inheriting a Department that is floundering.

The question is whether she can or will tack back to calmer constitutional waters.

As discussed in my written testimony, the Framers focused on one defining single danger in our system and that is the aggrandizement of power in any one branch or in anyone's hands. They sought to deny every branch the power to govern alone.

Our system requires consent and compromise. It goes without saying that when we are politically divided as a Nation as we are today, less things get done. But that division is no license to go it alone as the President has suggested. You have only two choices in the Madisonian system. You can either seek to convince your adversaries, or you can seek to replace them. You do not get to go it alone.

And there is nothing noble about circumventing the United States Congress, because it means you are circumventing the United States Constitution. And any person who claims that they can get the job done alone is giving the very siren's call that the Framers warned us against, and one that I hope this body resists.

In my testimony I have laid out examples of how this change is occurring. I have divided it between obstruction of legislative authority and the usurpation of legislative authority. The obstruction of legislative authority includes the blocking of the contempt citation, the non-defense of Federal statutes. Usurpation includes many of the legislative changes that we will be talking about today and has been discussed by others.

The American people, in my view, have been poorly served in recent years by the Justice Department. The balance that has been sought in recent years has been lost precisely as the Framers have feared, the rise of a dominant Executive within our system, a type of "über-presidency."

It is certainly true that the Framers expected much from us, but no more than they demanded from themselves. They expected this institution to fight jealously over its own authority. They gave you that authority not to protect your power; the separation of power is designed to protect liberty from the concentration of power. It does not matter what party we are from and it does not matter if we agree with what the President has done. In my view he has worthy ends, but he has chosen unworthy means under the Constitution, and the Justice Department has been a catalyst for that.

In exercising the power of confirmation, this body has an undeniable interest in confirming that a nominee will address these relational breaches, these unconstitutional actions.

I can only imagine the pride that Ms. Lynch's family will have when she raises her hand to take the oath of office. When that moment comes, however, there should be a clear understanding as to

what she is swearing true faith and allegiance to as the 83rd Attorney General of the United States of America.

The Department that she leads should be the embodiment, not the enemy, of the separation of powers. It is a covenant of faith that we have with each other. And I sincerely hope that she regains that faith as she takes over, as she may, the Department of Justice.

[The prepared statement of Professor Turley appears as a submission for the record.]

**STATEMENT OF DAVID A. CLARKE, JR., SHERIFF,
MILWAUKEE COUNTY, MILWAUKEE, WISCONSIN**

Sheriff CLARKE. Good morning, Chairman Grassley, Members of the Senate Judiciary Committee, and Ranking Member Leahy. I am honored to address you this morning about a frequent news topic, American policing at the local level.

These hearings are focusing on the confirmation of possibly the next Attorney General of the United States, Ms. Loretta Lynch, and I wish her well.

I want to spend some time critiquing outgoing Attorney General Eric Holder's tenure at the United States Department of Justice and use it as the framework as a way forward.

The mission statement of the U.S. Department of Justice says, "To enforce the law and defend the interests of the United States according to the law"—let me repeat that—"according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure impartial administration of justice for all Americans."

In my 36 years in law enforcement I have viewed the United States Department of Justice as an ally in pursuit of justice. Local law enforcement has always been on the front lines in preventing and controlling crime and seeking just punishment for those guilty of unlawful behavior, as the mission statement of the DOJ implies.

What I have witnessed from the Department of Justice under the leadership of Attorney General Eric Holder has been almost hostility toward local law enforcement. I have seen this in both public statements made about the profession and some of the policy decisions that treat police officers as adversaries instead of allies in the pursuit of justice.

Partnering with local law enforcement agencies and ensuring the fair treatment of all Americans in the pursuit of justice are not mutually exclusive. What we all witnessed in Ferguson, Missouri, back in August, was a tragedy, an unfortunate incident for Officer Darren Wilson and citizen Mike Brown. What followed, however, compounded that tragic situation as people across the United States converged on Ferguson to exploit the situation for self-serving purposes.

Suffice it to say that was not America's finest hour. In the days and weeks that followed in Ferguson, Missouri, the police-related use of force was forefront in the national news. There was call for—at that moment when the U.S. DOJ inserted itself early into the process—an appeal to reasonableness, responsible rhetoric, and

cautioning against a rush to judgment. Instead, some very powerful people made statements that only heightened rising tensions.

Unfortunately, race is, has been, and will always be an explosive issue in America. The incendiary rhetoric used by Eric Holder created a pathway for a false narrative that then became the rallying cry for cop haters across America. It sparked unjustified hatred toward America's law enforcement agencies and its officers.

Without a shred of evidence, a broad brush has been used to unfairly malign the reputation of the profession of policing in the United States. The accusation has been made that our community's finest systematically engage in the practice of targeting young Black men because of the color of their skin. That claim is patently false and I reject out of hand the mere suggestion of it. If I am wrong, then someone needs to show me the evidence.

Officers at the local level put on their uniforms and go out every day to make their communities better and safer places to live. Without them, our communities would collapse into utter chaos. The world that our officers operate in is complex, dynamic, uncertain, and one where unfortunately things can and do go wrong. When that happens, the American law enforcement officer needs to know that after a thorough and transparent investigation the facts and evidence of a particular case will be applied to the rule-of-law standard for a decision about their actions.

After putting their lives on the line, they do not deserve a standard of false narrative, preconceptions, misconceptions, emotional rhetoric, or racial demagoguery. Author and scholar Thomas Sowell said in a thought-provoking piece on the rule of law, "If people who are told that they are under arrest, and who refuse to come with the police, cannot be forcibly taken into custody, then we do not have the rule of law, when the law itself is downgraded to suggestions that no one has the power to enforce." So where do we go from here? How do we get beyond this damaged or frayed relationship between local policing and the U.S. DOJ?

My suggestion is for the next U.S. Attorney General to articulate clearly a renewed commitment to rebuilding trust with local law enforcement. That involves open lines of communication with an emphasis on listening to the suggestion of law enforcement executives, and for the Nation's sake, please stop undermining the character and integrity of the American law enforcement officer.

Next, resist at the Federal level to interfere with local police training standards. Are cops perfect? No. In fact, far from it. But they are our community's finest. Every community is unique in what will work and what will not work. We already have State standards for training.

Finally, I want to speak on two emerging issues on the radar screen in criminal justice: sentencing and prison reform. Any discussion about reform in these two areas that does not include a counterview about the consequences of this short-term technical fix and its impact on crime victims will have a catastrophic consequence in already stressed Black and Hispanic communities.

The recidivist nature of criminals will cause more minorities to be victimized by violence similar to what happened this past summer in Milwaukee to Sierra Guyton, a 10-year-old girl shot in the

head and killed while on a school playground. The shooters were career criminals.

The Black community does not have the support structures in place for an influx of career criminals sent back into the community or to deal with the habitual criminals who currently rain terror on neighbors. Adding more crime and violence to that mix will only bring more misery to the overwhelming number of decent Black, law-abiding citizens just trying to get through life against already great odds. Reform that simply lowers the bar is nothing more than normalizing criminal behavior.

Thank you very much.

[The prepared statement of Sheriff Clarke appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Sheriff.

STATEMENT OF NICHOLAS QUINN ROSENKRANZ, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER, AND SENIOR FELLOW IN CONSTITUTIONAL STUDIES, THE CATO INSTITUTE, WASHINGTON, DC

Professor ROSENKRANZ. Thank you, Mr. Chairman, Ranking Member Leahy, Members of the Committee. I thank you for the opportunity to testify at this momentous hearing. The Committee has rightly decided to explore not just the qualifications of the nominee, but also the proper role of the office.

I myself take no position on the ultimate question of whether the nominee should be confirmed. Rather, I offer some observations about the proper role of the Attorney General, and some comments, alas, on the ways in which the current administration has fallen short of its constitutional obligations.

You have explored at length the Attorney General's weighty responsibility to supervise the various components of the Department of Justice. But, as you know, the most important responsibility of the Attorney General is not the supervision of the tens of thousands who work beneath her; it is the solemn counsel that she gives to the one who works above.

Her most important job is to give sound legal advice to the President of the United States. And perhaps the most important dimension of this function is to advise the President on the scope of his Executive powers and duties.

The Attorney General should rightly explore all legal options for the President to achieve his goals. But at the end of the day, if no legal options are available, the Attorney General must be prepared to say, "No, Mr. President, you have no constitutional power to do that."

The fortitude—the rectitude—required to say “no” to the President is perhaps the single most important job criterion for Attorney General of the United States. I am afraid that it is particularly important now, in an administration that is inclined to press the outer bounds of Executive power and to skirt the obligation to take care that the laws be faithfully executed.

I hope that the Committee will thoroughly explore the nominee's conception of faithful execution of the laws, and her resolve to advise the President when he risks running afoul of this constitutional obligation.

The Constitution provides that, “The President . . . shall take care that the Laws be faithfully executed.”

First, notice that this is not a grant of power, it is the imposition of a duty: “the President . . . shall take care . . .” This is not optional; it is mandatory.

Second, note that the duty is personal. Execution of the laws may be delegated, but the duty to “take care that the Laws be faithfully executed” is the President’s alone.

Third, notice that the President is not required to take care that the laws be completely executed; that would be impossible. So the President does have power to make enforcement choices, but he must make them faithfully. And finally, it is important to remember the historical context of the clause: English kings had claimed the power to suspend laws unilaterally. The Framers rejected this practice.

With these principles in mind, we can turn to three recent examples. Alas, there are many more one could choose.

First, the Obamacare suspension. On July 2nd, 2013, just before the long weekend, the Obama administration announced via blog post that the President would unilaterally suspend the employer mandate of Obamacare, notwithstanding the unambiguous command of the law. The statute is perfectly clear: It provides that these provisions become effective on January 1st, 2014. This blog post—written under the breezy Orwellian title, “Continuing to Implement the ACA in a Careful Thoughtful Manner”—makes no mention of the statutory deadline. Now, whatever it may mean “to take care that the Laws be faithfully executed,” it simply cannot mean declining to execute a law at all.

Our second example, immigration, is almost an exact mirror of the first. In this context, rather than declining to comply with a duly enacted statute, the President has decided to comply meticulously—but with a bill that never became law.

Congress has repeatedly considered a statute called the DREAM Act, which would have exempted a broad category of aliens from the INA, but Congress declined to pass it. So on June 15th, 2012, the President announced that he would simply not enforce the INA against the precise category of aliens described in the DREAM Act. He announced, in effect, that he would act as though the DREAM Act had been enacted into law, though it had not.

Now, this is clearly not an effort to conserve resources. After all, the Solicitor General went to the Supreme Court to forbid Arizona from helping to enforce the INA. Exempting more than 1.76 million people from the immigration laws goes far beyond the traditional conception of prosecutorial discretion.

Now, Professor Legomsky cited an unsurprising consensus of liberal immigration law professors approving the most recent action. I will cite just one authority, the President of the United States, just a few years ago: “America is a nation of laws, which means I, as the President, am obligated to enforce the law With respect to the notion that I can just suspend deportations through Executive order, that’s just not the case, because there are laws on the books that Congress has passed There are enough laws on the books by Congress that are very clear in terms of how we have to enforce our immigration system that for me to simply through

Executive order ignore those congressional mandates would not conform with my appropriate role as President.” I would hope that the nominee would agree with this statement.

My final example is IRS targeting. I believe the witness to my left is going to talk about that. I would be happy to answer constitutional questions on that topic as well.

Thank you.

[The prepared statement of Professor Rosenkranz appears as a submission for the record.]

**STATEMENT OF CATHERINE ENGELBRECHT, FOUNDER,
TRUE THE VOTE, HOUSTON, TEXAS**

Ms. ENGELBRECHT. Good morning, Mr. Chairman, Members of the Committee. I am the founder of True The Vote, a national, non-profit initiative to protect voters’ rights and promote election integrity.

I am here today because I was targeted by this Government for daring to speak out. I am one of the thousands of Americans who have become, sadly, living examples of this kind of trickle-down tyranny that is actively endorsed by the current administration and rigorously enforced by the Department of Justice.

Over these past few years, the Department of Justice has made their presence very well known in both my personal and professional life. Since filing for tax exemption with the IRS in 2010, my private businesses, my non-profit organizations, and I personally have been subjected to more than 15 instances of audit, inquiry, or investigation by Federal agencies, including the IRS, OSHA, ATF, and the FBI. All of these inquisitions began only after filing applications for tax exemption. There is no other remarkable event or rationale to explain how through decades I went unnoticed by the Federal Government but now find myself on the receiving end of interagency coordination into and against all facets of my life.

I shared that same timeline as a part of testimony given in February of 2014 at a hearing before the House Oversight and Government Reform Committee. Time did not permit then, nor does it now, to give a full account of the cast of characters and confluence of events that fill a binder with over 800 pages worth of Government subterfuge. But in one way or another, the Department of Justice has found its way into almost every aspect of my story.

In my attorney’s testimony at last year’s House hearing, she spelled out for the Committee why we believed that the Department of Justice investigation into the IRS targeting scandal was in fact a sham. Within hours of her filing, she received a phone call from the Department of Justice now suddenly wanting to interview me. It was the first time we had been contacted in approximately nine months after the investigation had purportedly commenced.

An arrangement was made with the Department of Justice Public Integrity Section, but we were then told that the Civil Rights Division would also be participating in my interview. Now, this is significant because, at the time, that same Civil Rights Division was fighting against True The Vote in the courtroom back in Texas, trying to prevent us from becoming an intervening party for the State in voter ID litigation that the Department of Justice had brought against them.

The DOJ told my attorney that unless I was willing to waive my rights and obligations to the involvement of the Civil Rights Division that they would not interview me at all. And to date they still have not.

A handful of months later we met the Department of Justice in court again, this time as they represented the Internal Revenue Service in a lawsuit *True The Vote* filed against the IRS in 2013. The DOJ assured the judge that there was no more evidence that could be recovered from any of the hard-drive crashes that had befallen IRS employees named in our suit. All of the contents from all of the hard drives was certainly and irrevocably lost. This purported dead end in discovery went on to become a factor in the judge's ultimate decision to dismiss our case.

Yet just one month later, the Treasury Inspector General's investigation turned up an additional 2.5 million emails, of which 30,000 were Lois Lerner's. Is there the will to ever get to the truth behind this nightmare of citizen targeting?

For six years, the Department of Justice has operated as an increasingly rogue agency where preservation of personal liberties runs a distant second to preservation of political power. Will this new leadership be any different? As the leader of a voter rights organization, I was extremely disappointed to hear Mrs. Lynch's comments in a speech she made in Los Angeles last February when she said that voter ID laws were passed in the Deep South so that "minority voters would be disenfranchised." And, further, that she applauded DOJ's lawsuits filed against those States having ID programs and promised that those lawsuits would continue.

Seventy percent of Americans believe that showing photo identification in order to vote is a common-sense safeguard to our electoral process. Should we count on continued resistance from the Department of Justice led by Loretta Lynch?

In fact, the most significant voter disenfranchisement threat currently facing our country was made possible by the President's recent order of Executive amnesty. States are not prepared to deal with the coming influx of illegal aliens wanting social service programs like Medicaid, welfare, and, of course, driver's licenses. Federal law requires that these programs offer voter registration opportunities, which is a wonderful thing for American citizens. But these programs were not designed to verify citizenship, leaving many States without the necessary firewalls to ensure that non-citizens do not end up as registered voters. And every vote cast by a non-citizen disenfranchises the vote of a citizen.

We know Mr. Holder is a proponent of amnesty. Where will Ms. Lynch stand on the issue?

In a 2009 speech, General Holder called America a "Nation of Cowards." Well, if you remember nothing else from my comments, please remember this: I am not a coward and I am not a victim. I am a messenger for all of those Americans who love our country, love our fellow countrymen, and pray for a better tomorrow.

And I am here to say our country, right now, is at a tipping point. We have replaced rule of law with mere relativism. We have replaced truth with political correctness and, in all of the double speak and double think, we have become increasingly unsteady about how we the people factor into a future left in the hands of

our current leaders. So please be bold, please choose wisely, because America is watching. Thank you.

[The prepared statement of Ms. Engelbrecht appears as a submission for the record.]

Chairman GRASSLEY. Thank you to all the witnesses and now Ms. Engelbrecht.

I am going to call in just a minute—or in just 30 seconds—I am going to call on Chairman Leahy to ask the first questions because he cannot come back this afternoon, but would you go ahead, Senator Hatch? You said you wanted to say something.

Senator HATCH. Well, I just want to mention to you, Ms. Engelbrecht, that we are thoroughly investigating this. The only reason we have not issued a report so far is that, as you mentioned, there were 30,000 more emails finally discovered. TIGTA, the investigative arm of the IRS, has not yet released those to us, and we are going to have to go through those before we issue a final report. But you have my total sympathy for what you have gone through.

Ms. ENGELBRECHT. Thank you, Senator.

Chairman GRASSLEY. And he is speaking as Chairman of the Finance Committee.

Senator Leahy.

Senator LEAHY. Well, thank you, Mr. Chairman. I appreciate your courtesy.

I would ask consent that I put in the record—

Chairman GRASSLEY. Without objection.

Senator LEAHY. I just mentioned a number of the letters I will submit—former FBI Director Louis Freeh, whom we all know very well, is supportive of Loretta Lynch, and Congressman John Lewis, a number of Justice Department officials both in the Bush administration and various Democratic administrations, the FBI Agents Association. I will not list all of them, but if they could all just be part of the record.

Chairman GRASSLEY. They will be, Senator Leahy.

[The letters appear as submissions for the record.]

Senator LEAHY. We have nine witnesses here today. Would those who oppose Loretta Lynch as Attorney General please raise their hand?

Let the record show no hands were raised.

Ms. Fedarcyk, you know, it is amazing, your record. You started off as a beat cop in Nevada, joined the FBI, and 23 years later, you were heading up the FBI's largest field office. And like many here, I was briefed during that time on some of the investigations you had underway, especially in the terrorist area. They were remarkable in their complexities.

You also dealt, as you said, with Loretta Lynch during that time. Do you believe that she has the temperament and the demeanor to be an Attorney General?

Ms. FEDARCYK. Senator, my 2 years' exposure working alongside Loretta—and I say “alongside” because it was truly a seamless partnership—I think gives me a little bit of background and experience to be able to say that I firmly believe that Loretta Lynch possesses all of the necessary attributes that the Nation should de-

mand of an independent Attorney General. And I wholeheartedly support her nomination and confirmation.

Senator LEAHY. I do not want to put words in your mouth, but do you find that she would make independent judgments?

Ms. FEDARCYK. Yes, sir. And, in fact, that was part of my opening statement, the fact that one of the three attributes that I wanted to touch upon was the fact that she operated independently, did not bow to outside influences, looked at the facts, looked at the issues. When she was confronted with an issue, she gathered input from stakeholders, solicited their input, took a look at the law, made sure that her decisions were wholly based on the facts and the law and independently arrived at.

Senator LEAHY. Your career in law enforcement was a lot longer than my career in law enforcement, but I know during my years in law enforcement what we wanted was independence, and I appreciate that.

Mr. Barlow, nice to have you back here. I usually would see you in the other Committee room. Do you believe that Loretta Lynch has the independence to stand up to others in the executive branch, including the President, if she feels she is in the right and has to stand up to do her job as Attorney General?

Mr. BARLOW. Yes, Senator, I do. In my experience working with her and working through any number of different issues, seeing her in a variety of different circumstances, I have always known her to be thoughtful, well prepared, and someone who is interested in the facts and the law. I do not believe the President or anyone on this Earth could get her to make a decision that she did not believe was right and had a firm basis in where her duty was at that moment.

Senator LEAHY. In Louis Freeh's letter, he talks about her being part of the group that went to Italy for the funeral of one of the top Mafia fighters, somebody that both Director Freeh and I had known, and he said that she was there with him on that because of her attitude about organized crime. So I have known her peripherally over the years and more since the nomination.

But, Dr. Newsome, you have known her longer than all the rest of us. Do you believe she would stand up for what she believes is right no matter who she might be getting pressure from—the President, me, Senator Grassley, or you?

[Laughter.]

Reverend NEWSOME. Absolutely, Senator. She would demonstrate independence in the most constructive of ways. One of her greatest attributes, as has already been noted, is her ability to hold forth with the strength of her own convictions, having prepared herself thoroughly, thought through matters very, very comprehensively, having identified the issues in a way that she could communicate her position in a way that would garner nothing but the highest of respect.

Senator LEAHY. I talked yesterday about as a young law student being recruited by the then-Attorney General of the United States to come to work for him, and I had asked him whether he would stand up to the President of the United States if need be. He assured me he would. Later he did when he prosecuted a man who was essential to the election of the President. And when I asked

him later about that, I said, "Attorney General Robert Kennedy, what was the reaction?" He said, "I stayed away from family gatherings for a little while."

[Laughter.]

Senator LEAHY. Professor Turley, many of us have seen you many, many times. The House Republicans have hired you to sue the administration in another area, and the taxpayers will pay your fee. It was said that this could cost as much as \$3 million. They are not paying you \$3 million, are they?

[Laughter.]

Professor TURLEY. I am certainly open to that, Senator Leahy. But, no, no one has offered me \$3 million.

Senator LEAHY. What is the hourly rate you do charge?

Professor TURLEY. I think the hourly rate is set by the contract, not by me, I think at a top of \$500. But I seem to recall that.

I want to correct something. I am actually working not for the House Republicans but for the House of Representatives. They voted to approve the—

Senator LEAHY. It was a Republican vote. It was a partisan vote, as you know. Not to spin it too closely. But do you get paid for your testimony here today?

Professor TURLEY. Oh, no, of course not.

Senator LEAHY. Thank you. I thought I would ask that out of fairness to you.

I appreciated the answer when no hands went up to the first question I asked, and I hope we can move on. Many of you have questions about the past operations of the Department of Justice. I have some disagreements with that, but I think we are talking about the remaining time of this administration and the Department of Justice. And, frankly, as one American and as a former prosecutor and as the longest-serving Member of the Senate and one who has voted on a lot of Attorneys General, both for Republicans and Democrats, I feel very, very confident in voting for Loretta Lynch as Attorney General.

And, again, I thank you, Mr. Chairman, for your courtesy.

Chairman GRASSLEY. You bet.

I am going to start out with Ms. Attkisson. In your testimony, you say that you have a long career of investigative reporting. I am sure you have dealt with pushback from powerful people before. What makes the last few years different?

Ms. ATTKISSON. I defer somewhat to some of my colleagues that I quoted in my opening statement who said this was in their experience, which is longer than mine, the most difficult administration they had dealt with. Ann Compton, another correspondent, said this was the most closed President she has dealt with in seven Presidents she has covered. And I see it as a high point on a trajectory and a continuum, meaning every administration seems to be worse than the last. Although they come in promising openness and transparency, they seem to pick up where the last one left off. And there has not been as much pushback, I think, from Congress and the media in some cases to keep that balance because, of course, the Government tends to, for whatever reason, covet information, separate itself from the public, and treat itself kind of as one and apart.

But we are supposed to help create a balance so it does not get out of whack, and I think we have not done a very good job at that in the last couple of years.

Additionally, this administration has employed very aggressive techniques that are available to it that were not available years ago, such as using social media and surrogate bloggers to put out false information to controversialize any reporters who dare to do the normal oversight reporting that we have done on other administrations. And I think that has been somewhat successful.

Chairman GRASSLEY. You say in your testimony that you were once barred from attending a briefing in the Justice Department. What reasons were you given?

Ms. ATTKISSON. A briefing was called on *Fast and Furious*, and I was sent over to the office, but Tracy Schmaler, the press officer, called back immediately and said do not bother to come, that she would not clear me in the building, although I have a press pass, I have been cleared, you know, through the FBI to walk up to the President of the United States, but she was not going to clear me through building security. She did not give a reason other than to just say they only wanted the normal beat reporters to attend. I cannot tell you how improper that is, in my view, how improper it is that Government officials who control public assets would misuse their authority to, in essence, hand-pick the reporters who get to cover the story, I think, in essence, the way they would rather it be covered and keep out in some cases more knowledgeable reporters who have been covering that particular issue. That had never happened to me before. I never tried to go there afterwards. It did not happen to me afterwards. But I think that was a very important thing that was done, and I think it was very improper.

Chairman GRASSLEY. Do you think any of your colleagues and fellow journalists pulled punches because they thought they might be barred?

Ms. ATTKISSON. I do not personally know. I think the reporters on the ground do a great job, but I do know there are managers and editors—and I have spoken to executives from three networks—who have given instances in which they have been specifically threatened with loss of some sort of access if the news organization takes a particular news course. So that threat of access is definitely felt.

Chairman GRASSLEY. My next question gets to the fact that we are not here to talk about her qualifications—I do not think anybody questions that—but whether she can make changes in the Department of Justice. What do you think needs to be done to correct the chilling effect on the press over the last few years?

Ms. ATTKISSON. Sometimes I think it is more than just the physical steps that are taken. It is an action that is seen and a message that is perceived. Right now, regardless of steps that have been taken to mitigate damage that has been done, there is still a large distrust of the Justice Department, and in some cases Government in general.

There are Members of Congress and staff and whistleblowers and other journalists who commonly talk about the idea that they believe—whether it is true or not—that they believe they are being monitored on their phones and/or computers. How you get past

that suspicion that has been created by the actions that we have seen, it is going to be difficult.

One very tangible thing that could be done and I think needs to be done—and I will not belabor it, but it has to do with freedom of information law, which is pretty much pointless and senseless now in its application at the Federal level. It does no good. It has been used—instead of to facilitate the timely release of public information, it has been used as a tool to obstruct and delay the release of public information. It is no good, you know, if you even do go to court to get your public documents, that is at taxpayer expense. It still serves the purpose of delay that the bureaucracy wishes to serve. And at the end, even if they have to pay the plaintiff's fees, that is done with our tax dollars, and basically the Federal agency gets rewarded for a job well done because they have been able to obscure and delay the release of these public documents. So FOIA is extremely broken at the Federal level.

Chairman GRASSLEY. You just describe my last question, so you will not have to answer it, but just to make it clear, you felt your computer was hacked, you filed for information on it, and you still do not have an answer. Is that right?

Ms. ATTKISSON. That is right. The FBI, I think something like—I filed a request just in general for information 540 days ago. A response is due in something like 20 business days. But this is very typical of FOIA responses.

I got a very partial, incomplete response last night to a FOIA request that I made with the Department of Justice Inspector General, which did not include the forensics that supposedly came along with some conclusions and summaries they made, so that will be a process that—who knows if I will ever get the documents I have been asking for for months. But this is very typical, reporters will tell you, and citizens and consumers, of their efforts to try to obtain easily accessible public information or information that should be easily accessible.

Chairman GRASSLEY. Ms. Engelbrecht, in May 2013, General Holder announced that he had ordered the Department of Justice to conduct a criminal investigation into the IRS for targeting conservatives. At the time, the Attorney General called the IRS practices “outrageous and unacceptable.”

When did the Department of Justice first reach out to you or your lawyer to learn the details of your ordeal?

Ms. ENGELBRECHT. We had heard nothing from the Department of Justice right up until the day before we were to testify before the House Committee. My attorney and I were both prepared to testify. My attorney filed her testimony in which we were very critical of what had happened to that point, and it was not hours later that the Department of Justice called for the first time to ask to speak with us, so 9 months approximately.

Chairman GRASSLEY. So after 9 months, General Holder ordered the investigation, reached out to you, and what prompted them to do so? Do you have any idea?

Ms. ENGELBRECHT. I think it was that testimony that was filed that left no stone unturned about what we already experienced.

Chairman GRASSLEY. So let me get this straight. Attorney General Holder announces an investigation into the IRS' targeting of

tax-exempt groups like yours, and 9 months later it takes a congressional hearing for you to be contacted by the attorneys at the Department of Justice. You just said "yes" to that.

Ms. ENGELBRECHT. Yes, sir.

Chairman GRASSLEY. That is disgraceful. To your knowledge, who did they talk to before they reached out to you?

Ms. ENGELBRECHT. Certainly we saw all over the news that they were talking to Lois Lerner and others inside the Department. I was in very regular contact with lots of other leaders of other organizations that had been targeted. To the best of my knowledge, no one has been contacted still by the Department of Justice.

Senator SESSIONS. Mr. Chairman, I would note that the Alabama Tea Party leader who was victimized has still not been investigated, been interviewed, even though I directly asked the FBI Director to do so a long time ago.

Chairman GRASSLEY. Yes. Then so to date you have not been interviewed by the FBI?

Ms. ENGELBRECHT. No, sir. They did ask about 9 months ago, but it was upon the contention that they would be allowed to have the Civil Rights Division in, and I was not willing to do that because the Civil Rights Division had already been on record opposing my organization.

Chairman GRASSLEY. Okay. Well, I do not blame you for declining to speak to the Department of Justice. If I had been subjected to 15 audits and inquiries from four different Federal agencies in less than 3 years, I would only want to meet with neutral and fair investigators and certainly not a person who had been appointed to do this investigation and who also had an outstanding record as President Obama's campaign donor.

One final question. Has the Department of Justice, or anyone else for that matter, advised you why four powerful Federal agencies descended on your doorstep?

Ms. ENGELBRECHT. No, sir. But I would sure like to know.

Chairman GRASSLEY. Okay. Let me check with my staff whether I call on Feinstein or Hatch first.

Okay, Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman.

I really appreciate what you have gone through. I cannot say much about it because of 6103 Authority, but we are going to get to the bottom of it.

Ms. ENGELBRECHT. Thank you, sir.

Senator HATCH. We have already gotten quite a bit to the bottom of it.

I want to come back for a least a few minutes to thank this panel of witnesses for contributing to the confirmation process regarding Ms. Lynch's nomination. I am going to be a strong supporter of her nomination, and I believe she is not only qualified but exceptionally well qualified and a very good person to boot.

I especially want to recognize David Barlow who is here today, who served as a U.S. Attorney in my home State of Utah for 3 years and before that worked on this Committee as chief attorney for my companion here in the Senate, Senator Lee.

Professor Turley, welcome back to the Judiciary Committee.

Professor TURLEY. Thank you, Senator.

Senator HATCH. Yesterday I asked Ms. Lynch whether the Attorney General has the duty to defend the constitutionality of duly enacted laws if there are reasonable arguments to do so. You discussed this in your prepared statement, and I would like your comment on one specific issue that I raised.

Attorney General Holder did not decide never to defend the constitutionality of the Defense of Marriage Act but to stop defending its constitutionality. His own Justice Department lawyers had already been making reasonable amendments defending DOMA or this bill, and Mr. Holder decided to stop making them. And that is what made me say that he has abandoned his duty. Do you agree?

Professor TURLEY. I agree. I thought that the decision was wrong. I happen to agree with the President. I was a critic of DOMA. But I thought that the abandonment of the defense of DOMA was inimicable to the rule of law. I thought it violated a longstanding understanding with this body. You know, there is history here, as you know. You are a student of the Constitution, and you know that there has always been this tension between the Congress and the Justice Department as to who can be in court defending things of this kind. The Justice Department has always insisted they are the exclusive representative—

Senator HATCH. Had you been Attorney General, you would not have stopped that.

Professor TURLEY. Oh, absolutely not. I would have defended that law.

Senator HATCH. Even though you did not agree with DOMA.

Professor TURLEY. That is right. What is really—

Senator HATCH. The Defense of Marriage Act.

Professor TURLEY. And what is also troubling is that there is no definition in the Attorney General's position as to when they will abandon a Federal law. I happen to agree with the criticism of the law, but there were plenty of people with good faith arguments that it is constitutional, including people on the Supreme Court. And if this is the standard for abandoning a Federal statute, I could see a President doing this in a host of different statutes.

Senator HATCH. You are right about that. I appreciate your comments. I am also glad that your prepared statement discussed the controversy over recess appointments. The idea that a President has the authority to tell the Senate when it is in or out of this or that sort of recess is astounding, and I am glad the Supreme Court unanimously rejected the administration's position on that matter.

In yesterday's discussion of prosecutorial discretion, the administration's defenders repeatedly said that this is really only about wisely using limited resources. You refer in your statement to the "ill-conceived litigation strategy of the Justice Department" defending this bizarre position on recess appointments. I wonder how many resources the Department uses pursuing these extreme positions in court that, as I said yesterday, got shot down over and over again, some 20 times. Do you agree?

Professor TURLEY. Absolutely. I testified before the litigation, after the appointments were made, and I said that, in my view, even though I thought very highly of the nominee, the appoint-

ments were flagrantly unconstitutional. There are close questions in the Constitution, in my view. This was not one of them.

Senator HATCH. That is one of the reasons I admire you. I mean, you are wrong on so many things, but you stand up—

[Laughter.]

Senator HATCH. And you are right on a lot of things, too. I have got a lot of respect for you.

Professor Legomsky, your prepared statement refers to a November 2014 letter from immigration law scholars. It states that the President's action establishing the Deferred Action for Parental Accountability program is "within the legal authority of the executive branch of the United States." But didn't the Justice Department's own Office of Legal Counsel in its opinion issued a week earlier conclude that, "The proposed deferred action program for parents would not be a permissible exercise of enforcement discretion"? Even OLC, the Office of Legal Counsel, which seems to be into efficacy rather than analysis these days, disagrees with these scholars on this issue.

Professor LEGOMSKY. Senator, the OLC memo distinguished between granting deferred action to those children who had arrived at an early age on the one hand, and in addition granting it to the parents of U.S. citizens and lawful permanent residents, while at the same time suggesting that it might not be legal to extend deferred action to the parents of the DACA recipients themselves and—

Senator HATCH. All right.

Professor LEGOMSKY. I do personally disagree with that latter suggestion of OLC, but otherwise, I thought the memo was very thoroughly and well articulated.

Senator HATCH. Okay. Sheriff Clarke, I want to personally thank you for your advocacy and leadership for police people all over this country and coming here today and giving your testimony. As I observed the reactions to the incidents like that in Ferguson, Missouri, I, too, became concerned about this rhetoric and the broad-brush picture that seemed to be developing about all law enforcement.

We heard elected officials claim that police officers across the country were indiscriminately shooting Black men, simply out of fear. Those incidents happened at the local level and involved local law enforcement. How much do you think that the Attorney General of the United States can affect the situation, negatively or positively?

Sheriff CLARKE. Thank you, Senator. A lot. The Attorney General of the United States has a big stage, and when he or she talks, people listen all across the country. And it gives the impression that that is the policy of the United States Department of Justice, and they have to choose their words carefully.

Senator HATCH. Well, thank you.

Ms. Attkisson, I do not know what your politics are, but I admire you greatly. You are what an investigative reporter ought to be. And, frankly, your testimony here today has been very profound, very strong, and it ought to wake everybody up at the Justice Department and in the administration, and in all administrations, both this one and any in the future.

So you are doing a great public service here and having the guts to stand up and take the positions that you have. I have a lot of admiration for you.

Professor Rosenkranz, during the hearing yesterday, I acknowledged that prosecutorial discretion obviously involves enforcement of resource allocation decisions in individual cases. But I said, "Applying that discretion across the board to entire categories of individuals has the same effect of changing the law itself." Do you agree with that?

Professor ROSENKRANZ. Yes, I do, Senator. It is not a clear line that one can draw, but when you start to talk about exempting millions and millions of people from Acts of Congress, this looks a lot more like legislation than like enforcement discretion.

Senator HATCH. Professor Legomsky offers the Supreme Court's decision in *Arizona v. United States* to justify using enforcement discretion in a categorical fashion. But the Court's opinion uses the word "individual" more than a dozen times.

For example, it discusses "the power to bring criminal charges against individuals" and whether "an officer has probable cause to believe that an individual is removable."

In fact, one of the quotes from the Court's opinion that Professor Legomsky includes in his prepared statement says, "The equities of an individual case may turn on many factors." Does that support using discretion for individual enforcement decisions in a categorical way which has the effect of changing the underlying statute itself?

Professor ROSENKRANZ. I quite agree with you, Senator. I think the traditional conception of prosecutorial discretion has always been case by case.

Senator HATCH. Okay. Your prepared statement says that the most important dimension of the Attorney General's function "is to advise the President on the scope of his Executive powers and duties." Does that function happen on a blank slate? Or do the essential principles of our system of Government actually counsel special attention to the limits of presidential power?

Professor ROSENKRANZ. Quite right, Senator. I think the core of that responsibility is for the Department of Justice and the Attorney General in particular to think hard about the meaning of faithful execution of the laws and to counsel the President when he is close to the line of unfaithful execution.

Senator HATCH. In other words, is the Attorney General there to find some plausible, theoretical justification for whatever the President wants to do? Or is she there to enforce the real, substantive limits on power that are necessary for all of our livery?

Professor ROSENKRANZ. The Attorney General should help the President to find legal ways to do what he wants to do, but at the end of the day, it is essential for the Attorney General to be able to say, "No, Mr. President, that is something you cannot do."

Senator HATCH. My time is up. Thank you.

Chairman GRASSLEY. Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman. I am going to be very brief.

This is really a hearing to discuss the qualifications of a nominee—in this case, a very distinguished, very exceptionally well-

qualified nominee, on virtually any area that one can state. I really do not want to see that diminished by a critique by various people of the administration, and to me, Loretta Lynch is an outstanding role model, not only for women but for all of us in this arena, because as you can see, so much of this arena has become so partisan that here is the use of a hearing on the qualifications of a nominee to be used to criticize the administration in areas that Loretta Lynch had nothing to do with. I guess that is the coin of our realm here, but I remember other nominations where, if the issue was independence, where nominees fully admitted—and the Ranking Member mentioned this—that they were a wing of the staff to the President.

So I think we have a very special nominee in front of us, very skilled, very determined, but most importantly, I think she has used her life so well to be that combination of, what was said by one newspaper, combination of velvet and steel, and to see the impact of that on the strong support that she has for all of us in this arena I think is a kind of role model as how you—there are a lot of people that know how to separate everybody. There are very few people that know how to bring people together again and really develop a kind of consensus that can lead us forward. And because this institution is so split, the role of Loretta Lynch in this day and age I do not think can be underestimated.

So the fact that when Senator Leahy asked the question—and I forget how he put it—you know, which of you is in opposition to Loretta Lynch, no one raised their hand. And I think it is that way throughout the Nation. I think we should get on with the business. We should see this woman confirmed as quick as possible. Thank you very much. That is my statement, Senator Whitehouse.

Senator WHITEHOUSE [presiding]. Before I start claiming my time, let me say where we stand in terms of what is going on here, because the Chairman has just had to leave for a vote and he has left me instructed that if Senator Lee arrives or if another Republican arrives at the conclusion of my time, then they will be recognized. But if no one else is here, then we will recess at that point until 1:00 p.m.; is that correct?

Okay. Good.

Let me take my time to review the bidding where we are. No witness present today opposes Ms. Lynch as the nominee for Attorney General. Ms. Attkisson is here as a litigant against the United States with her lawyer sitting beside her. Her testimony never mentions the nominee. And I would ask, actually, unanimous consent that the redacted version of the IG report related to her claims be made a matter of record, which without objection it will be.

Mr. Barlow supports the nominee enthusiastically. Reverend Newsome supports the nominee enthusiastically. Ms. Fedarcyk, to use her phrase, whole-heartedly endorses the nominee. Professor Legomsky is here mostly to talk about immigration. His testimony does not make clear whether he does or does not support the nominee. May I ask you if you do?

Professor LEGOMSKY. I certainly do. Thank you for asking, Senator.

Senator WHITEHOUSE. Very well. That is now clear.

Mr. Turley says that his interest today is not to discuss Ms. Lynch as much as the Department she wishes to lead. But he goes on to say that he has no reason to doubt the integrity and intentions of Ms. Lynch, who displays obvious leadership and strength of character.

Sheriff Clarke is here and wishes the nominee well. But he goes on in his testimony to say, "I want to spend some time critiquing Eric Holder's tenure."

Professor Rosenkranz takes no position on the nominee, but comments on the tenure of Eric Holder; is that correct, Professor?

Professor ROSENKRANZ. [No audible response.]

Senator WHITEHOUSE. And Ms. Engelbrecht, have I said that right? Ms. Engelbrecht is an advocate for voter identification laws who would like Ms. Lynch to agree that voter identification laws are not efforts to suppress voting but took no specific position on the nominee; is that correct?

Ms. ENGELBRECHT. No specific position, sir. I have all the hope in the world that—

Senator WHITEHOUSE. Very good.

Ms. ENGELBRECHT. It will work out.

Senator WHITEHOUSE. So let me say two things: one, some many years ago George Washington set for himself what he called his Rules of Civility and Decent Behavior. He wrote 110 Rules of Civility and Decent Behavior to help him guide his own conduct in upright and honorable ways. I think it was Rule 89 of those Rules of Civility and Decent Behavior that George Washington kept that said the following: "Speak not evil of the absent for it is unjust."

There are plenty of forums where the Attorney General would have an opportunity to defend himself. This is not one. There is no forum here, there is no opportunity here for Attorney General Holder to answer these various charges that have been made. I think that is fundamentally unjust. And I think it is frankly beneath the dignity of this Committee at a time when we have a very significant and solemn charge before us to determine the fitness of a specific individual to be Attorney General of the United States to launch a series of unanswerable attacks.

I have no problem with the attacks. My problem is that choosing this forum for them where the individual in question has no chance to answer I think fails President Washington's test that one "speak not evil of the absent for it is unjust."

With respect to the other issues, I think we will have plenty of time to ventilate those in other forums. I am sure we will have plenty of time to address immigration, address voter ID and voter suppression, address surveillance, address all of those things. But, once again, in this forum, there is no opportunity for another side to be presented. And I regret that this hearing and this solemn occasion has been corrupted to that extent and turned into what appears to be a sound bite factory for Fox News and conspiracy theorists everywhere.

We actually have a nominee in front of us. She appears by all measure to be a terrific person. I think we should get about the business of confirming her and get about the business of voting on her. And if people have the strength of view that Attorney General Holder is not a good leader of the Department of Justice, the very

best way to act on that would be to confirm Ms. Lynch as quickly as possible.

Now, I happen to disagree with that view. I am proud of what Attorney General Holder has done and I would once again reference that he did not inherit a Department of Justice that was in good order.

The Office of Legal Counsel had written opinions that were so bad and so discreditable that even that administration was forced to withdraw them once they saw the light of day and received peer criticism.

U.S. Attorneys of Republican and Democratic persuasions and appointments alike rose in irritation and anger about the effort to manipulate the United States Attorneys that exploded into a scandal. There was that other creepy, midnight assault on a sick Attorney General in the hospital when White House lawyers came over to try to get his signature on a document and thankfully now-FBI Director Comey put a stop to that nonsense and ultimately the Attorney General of the United States was forced to resign from that office.

So stepping into that mess—and there were plenty of other features I could add—I think that Attorney General Holder is entitled to great credit for having put that Department back on its feet. I understand that he made decisions that people disagree with. I, for one, believe that those decisions are within the bounds of legitimate debate. I am not suggesting that my colleagues need to agree with them, but I think to personalize them so much as to say that it shows a moral or personal defect on his part reflects really more the narrowness of a specific ideology than any true judgment about the merit of a man who has served his country as a United States Attorney, as the Deputy Attorney General, as a Judge, and as Attorney General with what I consider to be great distinction.

So with that I will conclude my remarks. I see my friend and former Attorney General colleague, Senator Cornyn, is here as well. So under the Chairman's direction, as I yield my time it will go, as I understand it, to Senator Cornyn. Okay. I yield my time.

Senator CORNYN [presiding]. Thank you. I would thank my colleague whom I work with on a number of important matters. We are working on some important prison reform legislation, demonstrating that dysfunction has not taken over everything here in Washington—that we can actually work on things even though we have other differences.

But I just have to disagree with him, and I guess he disagrees with himself, because while he criticized the criticism of Attorney General Holder, he seemed to recall with great clarity the problems with the Bush Justice Department, or at least the things that he disagreed with. But that is the great thing about the United States Senate and about our great country, where all of us ought to be free to express our views without fear, certainly of Government intimidation.

And, Ms. Engelbrecht, I am glad to see you personally, but I find your testimony, once again, chilling and I admire your courage. And it cannot be easy for a citizen to fight their government with all the vast resources arrayed against you. And I just want to assure you, you are not alone. And Senator Hatch, who is Chairman

of the Finance Committee which has jurisdiction over the Internal Revenue Service, he's an honorable man and I know you can count on his commitment as well to get to the bottom of some of the matters that you refer to, but particularly regarding the Internal Revenue Service. So thank you again for your courage and your willingness to stand up to, and I would say also, inspire a lot of Americans who feel like Government has gotten too big and too intrusive and is crushing the spirit and the voice of a lot of individual citizens. So thank you for being here.

And, Ms. Attkisson, I have to tell you how much I am chilled by what you have to say. When I was in college, I was a journalism student before I lapsed into the law and became a lawyer. But the idea that you would be targeted and surveilled, intimidated, or attempt to intimidate you from doing your job, and I know you are a skewer of power on an equal opportunity basis. I can tell, from some of your testimony, you are not picking sides, but you are trying to do your job and it is repugnant to me that Government should try to array its power against the freedom of the press to intimidate people like you. And I appreciate the fact that you are not intimidated.

I told Senator Leahy, whom I partnered with on a number of Freedom of Information reforms, he and I are the Senate's odd couple when it comes to that, people who ideologically are bookends, but who agree in the public's right to know, and certainly we want to work with anybody who has got a good idea how we can make the system better. So I welcome that opportunity.

I just want to say that Ms. Lynch appears to be an outstanding example of the American dream and somebody who has got a distinguished career as a United States Attorney. The challenge is—for her and for everybody who takes on a job as a member of the President's Cabinet—is you are no longer just a prosecutor, you are somebody who is responsible for implementing policies, implementing policies of this President. And that has been the subject of a lot of discussion here today. And as I told Ms. Lynch privately, you have got two choices. You can take the job and implement the policies, or you can say, "Mr. President, I think what you are trying to do is improper, even illegal, unconstitutional" and quit, or not take the job in the first place. I do not see any middle ground on any of that.

And while I have the same reaction to Ms. Lynch's testimony that I had to Sarah Saldaña's testimony, who was a United States Attorney from Dallas, Texas, whom Senator Kay Hutchison and I recommended to the President for appointment, and who is now the Director of Immigration and Customs Enforcement, I told her the same thing: You were a prosecutor, you have done an outstanding job, but now you are going to be in a policy position where you are going to be asked to implement policies that I disagree with and you may in fact disagree with. So you will be left with that Hobson's Choice.

So while I hear some of my colleagues talk about the independence of the Attorney General, well, it is perhaps some independence, but it really is the independence of one's personal conviction not to cross that line and to be able to tell even somebody as powerful as the President of the United States "no" when he's gone too

far. Professor Rosenkranz, I would be interested in your views on whether you think the Attorney General can truly be independent.

Professor ROSENKRANZ. Well, I do not think “independence” is quite the right word. The Executive power is all vested in the President and that is as it should be. But the President has delegated to the Attorney General the function of advising him on legal issues. And that gets delegated again to the Office of Legal Counsel. And it is crucial for that function to be performed with as much integrity and independence as possible.

At the end of the day, the President can disagree with the Attorney General, can overrule the Attorney General, can even fire the Attorney General. But it is essential for the Attorney General to say “no,” if necessary, to say, “Mr. President, I have explored every legal option, and this is something you cannot do. This violates the Constitution.”

Senator CORNYN. Professor Turley, I know that Senator Grassley asked you questions about your representation of the United States House of Representative in a lawsuit. As you probably know, there is also a lawsuit pending in Brownsville, Texas, brought by 26 different States challenging the President’s Executive action that we have been discussing here this morning. And obviously, any lawsuit that is brought, the plaintiff has to establish standing to sue a claim of harm to them and not to the public generally. I remember that much of my law school.

But my point is, the policies of the Federal Government have a direct and very negative impact on State and local governments and on citizens who live—particularly in border States like mine—where just not that long ago we had what the President himself called a humanitarian crisis. Tens of thousands of unaccompanied children coming from Central America drawn by the magnet of a promise that if you can make it here, you are going to be able to stay here, something that a lot of people would like to do.

So I am not going to ask you to opine about the merits of that particular lawsuit. The judge there will probably make a decision here in the coming weeks, but do you see anything inappropriate about people who are aggrieved or suffering harm as a result of the actions by the President of the United States going to court and asking the court to make a decision?

Professor TURLEY. No, I do not. But I have long been a critic of the current standing doctrines that have been developing over the years. I think Walter Dellinger put it best when we testified in the House recently together and he said that he had spent his career as a standing hawk. And I have spent my career as a standing dove in that sense. I actually believe that it is important to give access to the courts, particularly for States. I think it is rather absurd to say that States have effectively no skin in the game, that they have no injury when you have these Federal pronouncements essentially coming down and imposing considerable costs upon them. And I think that you really see it in a sharp relief when these States have trouble even being heard on the merits.

And so when we look at all of these cases in terms of the effort to keep the merits from being heard, I think that has a really dysfunctional effect. I think that is one of the reasons we are seeing so much chaos—is the lack of definition in the separation of powers

and these constitutional rules. That can be rectified if we give greater access in the courts.

Senator CORNYN. Well, of course, from my perspective, coming from Texas, I see the policies of the Federal Government particularly with regard to immigration as having a very direct and real impact on taxpayers and citizens who are forced to pay the price in terms of healthcare, education, law enforcement, and the like, and they really have no recourse because they do not have the ability to do that for ourselves, something that is committed in the Constitution to the Federal Government's responsibility. And when the Federal Government does not do its job, the Federal Government does not necessarily feel the negative impacts; it is people who live in those places like Texas where it is very real.

I want to just maybe ask one last question and not to get too far down in the legalese, but Ms. Attkisson, as a result of the investigations that have been done here in Congress on the Fast and Furious gunwalking debacle, we were met with a claim of executive privilege by the Attorney General that was then embraced by the President of the United States even though there was no indication whatsoever that the President or higher level people at the White House were actually involved in this. But, could you just describe the sort of obstacles that you have run into in the course of your investigation of the Fast and Furious scandal?

Ms. ATTKISSON. Well, some of this, which is already sort of in the public record, when I began covering this story, the Justice Department employees put out internal emails that said the story was false and the whistleblowers were not telling the truth, which we now know it has been proven they were and the Justice Department has admitted it. But they put out a series of false implications and information along the way. They launched a campaign in my view of calling superiors, bosses, colleagues, social media using the bloggers that cooperate with them and work with them, in some cases directly, to disparage the reporting as if it were not true, repeating the false talking points in many cases.

And it was, you know, an all-out effort to try to chill the reporting and to stop other reporters that might be pursuing it. You can see from internal emails that have recently been released—after a lawsuit has been filed—that were withheld under executive privilege, the extent of the lengths to which public affairs officials inside the Government went to try to stop this line of reporting on a story that they clearly thought was proving to be very damaging for them.

Senator CORNYN. Thank you. I am advised that another roll call vote has been called on a series of votes that we are having on the floor of the Senate. So at the request of the Chairman, the Committee will stand in recess until 1:30.

Thank you.

[Whereupon, at 12:02 p.m., the Committee was recessed.]

[Whereupon, at 1:41 p.m., the Committee reconvened.]

Chairman GRASSLEY. I want to thank everybody for understanding the chaotic way the Senate is run when we have all these votes and we have this important issue before us of who should be the next Attorney General. So thank you all for your flexibility, as well as my Members.

Before we turn back to questions, I want to take a moment to comment on some criticism that we heard this morning from one Member on the Democratic side about some of the witnesses who are here today in this hearing.

I will not speak for any other Member of the Committee, but I, for one, find it absolutely disgraceful how our Government has treated some of our fellow citizens; and the Department of Justice, under its current leadership, has failed—really failed—to meet some of its most basic responsibilities.

Every single one of these witnesses, every one of them, speaks directly to Ms. Lynch's nomination, because the question in my mind is, as I stated yesterday, will she take these flaws seriously? Will she fix them? And I note that it was not too long ago that Democrats agreed that it was perfectly appropriate to call witnesses to address what they viewed as problems at the Department.

So I would note to the naysayer on the other side of the aisle, it was not beneath the dignity of the Committee when they were in charge, so why would it be now? And I would make reference to Judge Mukasey's hearing before he was approved to be Attorney General. The other side called witness after witness who testified regarding issues that occurred at the debarment while he was serving as a Federal judge in the Southern District of New York.

So, for instance, maybe it does not bother you that the IRS targeted conservatives and the Department does not seem to have taken the issues seriously, but it bothers me a great deal, and I want to know if Ms. Lynch is committed to tackling this problem and a range of others.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

And the Office of Attorney General is a big deal, and we need people who are able to take questions. The Department is entitled to be criticized and they are not perfect.

And I love the Department of Justice. I served in it 15 years. I was an Assistant United States Attorney for over two, and United States Attorney for 12, and I loved that job and I loved the people in it, and I so admired this Department. And as I told Ms. Lynch in private conversation, you have to understand the reputation of this great Department is being eroded. The situation is not good in this country. It has got to be re-established. We are not going to allow this to become a political body that just conducts its work in haphazard, political, reactive ways.

And I think Senator Hatch raised one of the questions that still galls me, and that is the failure to defend DOMA, the Defense of Marriage Act. That was a defensible act, and everybody that has ever been Attorney General or in such an office knows you have a duty to defend the laws passed by Congress. That is the Attorney General's duty.

Eric Holder and President Obama failed to do so, and it was shameful and disgraceful, an abandonment of the rule of law. And more and more people understand that. So I am not happy about what has happened to my Department of Justice.

And Ms. Englebrecht, I think it should be investigating these matters. They have not yet contacted people in Alabama, and I spe-

cifically requested it. Is this politics? Why not? Do you not go to the victims first—that is my experience—and get their story?

Well, Professor Turley, I thank you for your comments on what is happening with regard to executive overreach and congressional weakness. I think it is a—I know we all—you know, I do not deny that I am a Republican conservative, but I believe this is not a—just a partisan matter.

I mean, this is a huge erosion of constitutional powers of the United States Congress when the President of the United States, in contradiction to law, gives lawful status to people who are here unlawfully under the law, and not only that, creates a Social Security number for them, a photo ID, and an authorization to work and a right to participate in Social Security and Medicare. I mean, this is a stunning event, and we are in denial here, a lot of people, about the seriousness of it.

So I wanted to ask you about your testimony in the House. You say this: “The center of gravity is shifting and that makes it unstable”—and you are talking about the separation of powers—“and within that system you have the rise of an über-presidency. There could be no greater danger for individual liberty, and I really think that the Framers would be horrified by that shift, because everything they have dedicated themselves to was creating this orbital balance, and we have lost it. It is not prosecutorial discretion to go into a law and say an entire category of people will no longer be subject to the law. That’s a legislative decision.” And you go on at great—that is just a portion of your—I think, correct dissection of the fundamental issues at stake.

Would you—I guess you stand by that? Do you have any further comments you would like to make on that subject?

Professor TURLEY. Well, I certainly do stand by it. The interesting thing about the Madisonian system that we have is that—is the three branches are effectively locked in an orbit, like three bodies. In fact, the interesting thing about Madison is he was fascinated by Newton and the types of ways that bodies would interact. And our system reflects that.

And what happens is, if you have a tripartite system that is based on a principle of balance and then you introduce a dominant branch, it does not just fall out of kilter, it creates a very dangerous circumstance.

There are many legitimate questions that come out of the Constitutional Convention, but the one thing that returns over and over again is the collective view of the Framers—federalist and anti-federalist—that the thing we have to fear most in this system is the rise of a concentration of power in one individual. And they knew a lot about it, because they had just gotten rid of a person who had that type of concentrated power.

Senator SESSIONS. King George.

Professor TURLEY. Exactly.

Senator SESSIONS. And I had the Congressional Research Service look at that matter of fact, and they concluded that King George III—at the time of the American Revolution—was unable to enact or repeal any laws without the approval of Parliament. And this was the heritage we had from the British, and that is what part of the Revolution was about. It is a fundamental principle of the

formation of our Government that the Executive does not get to make laws. And I appreciate that.

Professor Rosenkranz, briefly if you do not mind, do you agree with that, that we are at—I think Professor Turley once said—a tipping point in the question of Executive and legislative power, and it is a matter of grave importance to the republic?

Professor ROSENKRANZ. I think it is certainly a matter of grave importance, and I think we have seen dramatic examples of executive overreach in the last several years, things that are unprecedented, things we have never seen before.

Senator SESSIONS. Well, and do you agree with Professor Turley that one of the most significant overreaches is the President's Executive actions with regard to amnesty?

Professor ROSENKRANZ. Yes, I absolutely do. I think it is inconsistent with his obligation to "take care that the Laws be faithfully executed," in particular, the Immigration and Nationality Act.

Senator SESSIONS. Well, it seems to me that they are arguing that "take care that the laws be executed" means you have to do the best you can to enforce the laws under the circumstances, which has some legal basis. But in truth, don't they go well beyond that and create whole new laws that are not even on the books? They are not authorized to do that, are they?

Professor ROSENKRANZ. You are quite right. This action looks a lot more like a legislative action than like Executive discretion.

Professor LEGOMSKY. Senator, may I jump in and comment on that, please?

Senator SESSIONS. Yes.

Professor LEGOMSKY. Thank you. We have heard a lot of very broad, general statements to the effect that separation of powers is important, which of course it is. That the President is not above the law, and of course he is not. But I have yet to hear any specific rebuttals to the points that I was making earlier about the specific sources of authority that Congress has provided.

We do have this legislation which specifically says it is the responsibility of the Secretary of Homeland Security to establish "national immigration enforcement policies and priorities." And not only that, but Congress has specifically directed the administration to prioritize three things: border security, national security, and the removal of criminal offenders—and those are precisely the priorities reflected in the recent Executive actions.

Senator SESSIONS. Well, I appreciate that, but I do not agree. Congress laid out 500 pages of detailed law involving immigration. Many of them are mandatory, and they are not being followed. And we had the—yesterday, Professor Rosenkranz, I asked Ms. Lynch who has more right to a job in this country, a lawful immigrant who is here, a citizen, or someone who entered the country unlawfully? And her answer: I believe that the right and obligation to work is one that is shared by everyone in the country, regardless of how they came here. And certainly if someone is here, regardless of status, I would prefer they would be participating in the workplace.

Do you think that contradicts immigration law of the United States?

Professor ROSENKRANZ. I do think this work authorization aspect of the President's action is perhaps the most troubling aspect of it. The traditional view of prosecutorial discretion is inaction; it is the President deciding not to do something to someone. But this affirmative action of giving folks permits, that is something that is unheard of in traditional prosecutorial discretion.

Senator SESSIONS. I agree with that. As a prosecutor, I know what prosecutorial discretion is. Everybody that has to deal in the real world uses that on a case-by-case basis.

And I further asked her: I want to have a clear answer to this question, Ms. Lynch, do you believe the Executive action announced by the President on November 20th is legal and constitutional, yes or no? And Ms. Lynch said: As I have read the opinion, I believe it is, Senator.

So we are being asked here to consider her nomination. Mr. Rosenkranz, when we decide who to vote for in the United States Senate to confirm somebody to the United States Cabinet, do you think it would be improper for the voting body, the United States Senate, to consider whether or not we believe that person will be an advocate for and a supporter of laws we think are unconstitutional and offend the policies Congress has established? Should we consider that when we decide who to vote for?

Professor ROSENKRANZ. I think that is absolutely the sort of thing that you should be considering, yes.

Senator SESSIONS. Well, I do too. And I believe Congress has a duty to defend its legitimate constitutional powers. It has several powers of its own. One of them is the power of the purse; one of them is the power of confirmations.

I do not see any need for this Congress to confirm somebody to be the chief law enforcement officer of this Nation who is at that table insisting that she intends to execute a policy that is contrary to law and to what Congress desires and what the American people desire, and says that someone here unlawfully is as much entitled to a job in this country as somebody who is here lawfully. It is just beyond my comprehension. Are we through the looking glass? Can't we see plain fact?

So everybody wants to talk about the politics. Well, the President can do this; he's shutting down Homeland Security. All these complaints. But the real question is fundamental: What are we going to do to defend our constitutional heritage? And what will this Congress be able to say to subsequent Congresses if we acquiesce in these kind of activities? I think it has permanent ramifications for the relationships of the branches of government.

Mr. Chairman, you have got a meteoric rise there, I see. I am impressed.

[Laughter.]

Senator SESSIONS. But I have got to say, no one could handle it better. I am proud of you.

[Laughter.]

Senator SESSIONS. I am over my time. Thank you very much.

Senator LEE [presiding]. Thank you very much, Senator Sessions. And thanks to all of you for joining us today. I deeply enjoyed your testimonies this morning before we had to go and vote, so thank

you for being here. Thank you for sharing with us your opinions, which are helpful and informative.

I want to begin my remarks just by commenting on some concerns that I have heard expressed from my colleagues on the other side of the aisle. Some have suggested that what we really ought to be doing here should be focused almost exclusively on Ms. Lynch's impeccable public service record and on the fact that she has served her country well, has served her clients well, that her résumé is not just amazing, but that it is extraordinary—and it absolutely is; that we ought to be focused on those kinds of qualifications and that we ought not be focused on the Department of Justice and on some of the things that are going wrong with it.

I have a somewhat different view of that in that I think both are relevant. For example, if we were running a company, if we were running a business and we were looking for a new CEO, if we were looking perhaps more appropriately for a general counsel, we would probably want to know what someone's view of the organization as it existed might be. We would probably want to know whether that person acknowledged the problems within the company, whether they were legal problems or other types of problems that the company faced.

So I think we are kidding ourselves if we suggest that we should not ask a nominee, someone who has been nominated to be the Attorney General of the United States, about problems existing within the U.S. Department of Justice. I think that is absolutely essential. And previous hearings in this Committee have borne that out—previous hearings in this Committee where, for example, this Committee reviewed Michael Mukasey after he was nominated to be the Attorney General of the United States in the last presidential administration. I think those hearings bore that out.

Now, yesterday we heard from Ms. Lynch. I am very impressed with her legal abilities, with her analytical abilities. Very impressed with her résumé and her strong record of public service. I was, however, very disappointed yesterday in the fact that in response to many hypothetical questions that were asked of her, we did not get a straightforward response, particularly when it comes to excesses of Executive power, particularly when it came to questions about prosecutorial discretion and so forth.

For those of you who may be watching this hearing who are not burdened with a law degree, hypothetical questions are the bread and butter of the American legal education system. To a very significant degree, especially in appellate litigation, they are the bread and butter of the practice of law.

One thing that I think all of us were taught in law school is that even when you do not want to answer a hypothetical question, even when it does not have an easy answer, you need to try to answer the question. If you do not, the judge will be very unhappy. I was disappointed yesterday that when I asked some questions of Ms. Lynch, she refused to give me a direct answer.

In an attempt to try to elicit an answer from her, I made the hypothetical increasingly simpler, increasingly clearer, asking questions like the following: Imagine a hypothetical State in which there is a 55-mile-an-hour speed limit. Imagine that the public is crying out for relief from that law; there is pretty widespread

agreement that the speed limit ought to go up at least to 65, maybe to 75, and that within the legislature there is also widespread support for that. But the legislature cannot agree on the exact speed limit to which it ought to be increased. So the governor, seeing an opportunity, then says, well, I am just going to come out with a new policy, and my policy is going to say if you want to exceed the 55-mile-an-hour speed limit, all you need to do is write to the governor's office and I will send you back a permit, a permit that says for the next three years, while I am the governor, I will not give you a ticket if you drive faster than 55 miles an hour, as long as you do not go faster than 75.

And I asked Ms. Lynch: Would that be appropriate? Would that be consistent with the rule of law? Would that be an appropriate exercise of prosecutorial discretion?

I did not get what I perceived to be a direct, one-word answer out of that, nor did I get a five-word answer out of it. I did not get an answer that I thought was satisfactory. What I did get was a response that said: I would really need to know more about that. But the more facts I added to the hypothetical, the more assumptions I added to it, it did not seem to make a difference.

So let me start by asking two of our professors who we have got here, Professor Turley and Professor Rosenkranz, is that, in your opinion, a difficult hypothetical question, such that if a student in either of your classes refused to answer that hypothetical or said it was too hard, would that be an appropriate answer that you would accept in your class?

Professor TURLEY. No, I would not accept it. I think that it is a straightforward question. I also think the question of whether—or, what the rule would be for the defense of Federal statutes yesterday was also a question that should be able—that someone should be able to answer.

I also commend you, Senator, on your view of confirmation hearings. Too often people talk about these hearings as sort of job interviews where you just look at the credentials. These hearings have a very significant role for separation of powers. As agencies become more independent, this is the moment that Congress tends to get answers to questions—is when you are looking at someone who will head the agency. And as I have said in my academic writings, it is not often enough that Senators use these hearings to try to rebalance or at least get answers from agencies, particularly one like the Department of Justice that has been so difficult to get material or answers from.

Senator LEE. I appreciate your thoughtful response to that, and I want to get back to that in a moment. I have just been informed of an error. No sooner had I taken the temporary gavel in this Committee hearing than I discovered that Senator Blumenthal was actually supposed to be next at bat. So my apologies for the error. We are going to push pause on my questioning, and as soon as Senator Blumenthal is ready, we will turn the floor over to him, then we will resume with me in a moment.

Senator Blumenthal.

Senator BLUMENTHAL. I really appreciate that, Mr. Chairman, and—

Senator LEE. My apologies for the error.

Senator BLUMENTHAL [continuing]. Like our friend Senator Sessions, I applaud your meteoric rise—within limits.

[Laughter.]

Senator LEE. Thanks for the clarification.

Senator BLUMENTHAL. But thank you for your courtesy and your deference.

I would like to ask Professor Legomsky to expand, or explain a little bit, why the examples involving enforcement of the speed limit may not be really an exact or valid comparison to what we have here.

Professor LEGOMSKY. Thank you, Senator. I think it was a fair hypothetical to throw out, but I definitely feel that there is no simple answer, mainly because there are two pieces of information we would certainly need. The big thing is that every statutory structure is different, and so the first thing I would want to know is what does the State statute say? How much discretion does it actually give the executive branch to set highway safety priorities?

In the case of the Executive actions we are comparing it to, for example, again, as I mentioned earlier, Congress was very specific. It gave the Secretary the explicit authority to establish national priorities and policies, and in addition even indicated what those policies and priorities are.

In addition to that, the other point I would make is that it matters what the particular priorities are. They have to be rational in one way or another. I think most Americans, if asked, would say the President's priorities look like pretty much common sense to me.

He's prioritizing national security, border security, and the removal of criminal offenders over the destruction of American families, the destruction of long-term community ties by people who have otherwise lived peaceful and productive lives in the United States. And since you cannot do everything, because the resources are limited, those strike me as reasonable priorities. I would ask the same question with respect to the speed limits. It has the—

Senator BLUMENTHAL. So maybe the comparison would be more like the governor of Utah deciding that on a flat straightaway in the middle of the State that going over the 65-mile-an-hour speed limit would not be enforced unless the person was doing something in addition dangerously, like weaving back and forth, but in more congested areas, that the 65 speed limit would be enforced rigorously.

In other words, defining other characteristics, not just saying we are not enforcing this law.

Professor LEGOMSKY. I think that is an excellent point, Senator, with all respect. And that is very analogous to what the President has done with his recent Executive actions because, as you know, both the prosecutorial discretion memo and the recent DAPA memo draw all kinds of fine gradations. And that I think accommodates the point that you were just making.

Senator BLUMENTHAL. And just to clarify, there has been a suggestion that the President's exercise of discretion does not permit case-by-case decision-making. In other words, that it is a broad, across-the-board exception for all cases. But in fact, what the President's doing is really an exercise of delegation of discretion, pros-

ecutorial discretion, for case-by-case decision-making. Is that a fair characterization?

Professor LEGOMSKY. I think that is a very fair characterization. I am thrilled to have the opportunity to answer that question, because that is something that has concerned me a great deal about some of the criticisms that have been offered.

The Secretary's memo says not once, not twice, but over and over again, that officers on the ground are instructed to look at the facts of each individual case, to evaluate them on an individualized basis, and specifically to exercise their discretion. Not only that, but as I mentioned this morning, the form that the USCIS adjudicators are required to use when they deny a DACA case lists the possible reasons for denial and it specifically lists exercise of discretion.

There was one other thing I was going to mention, and that is that if anybody doubts that these instructions are actually being obeyed, more than 32,000 denials have already occurred on the merits. This does not count things that are rejected at the lockbox for a failure to pay a fee. These are actual denials on the merits.

And I must say—and I hope this does not sound snarky, because I really do not mean it that way—that I worked at USCIS for two years, and I can assure everyone in this room that the USCIS adjudicators are not a corps of open-borders advocates who are looking for ways to systematically disobey the Secretary's explicit instructions. They take their job seriously, and they do exercise the discretion the Secretary has told them to.

Senator BLUMENTHAL. I appreciate that clarification. Of course, I would invite any of the other panel members to disagree if they wish to do so. But before my time expires, I would just like to clarify a point that was made earlier by my colleague and friend, Senator Sessions.

Loretta Lynch, I think yesterday, clarified that she does not believe there is a Federal right to work for immigrants who are not in a lawful status. I believe that the record will show that she did clarify that point.

And with that, if any of the other panelists want to comment on the question that I raised earlier, I would invite you to do so.

And thank you for your explanation, Professor.

Professor ROSENKRANZ. Well, Senator, I guess I would just say I think the proof is going to be in the pudding. But people who have looked at this, at the structure of the proposed policy—it appears that the case-by-case discretion that is built into this policy may well prove to be largely illusory.

Senator BLUMENTHAL. And I think you have just really hit it on the head. You just really hit it on the head, that the proof will be in the pudding as to what actually is done—as it is for every prosecutor. As a U.S. Attorney, as a State Attorney General, if I had decided I was not going to enforce any law, rightly I would have been criticized. And the proof will be in the pudding. In the same way as I had to make prosecutorial decisions, as every former prosecutor, as a member of this panel—and at least one is here now—it will be in what the record shows.

And we do not disagree if, in fact, the result is to make an across-the-board, wholesale, unexceptional rule; that would be

wrong. If the President decides as a matter of his discretion that across the board this—these laws are not going to be enforced, I agree with you. And when you say it is illusory, it will be—the proof will be in the pudding.

Professor ROSENKRANZ. Well, Senator, I do think we can try to evaluate the proposed policy just on the terms of the proposal, and I think there is reason for skepticism, even as the policy has been proposed. But you are quite right; the facts will develop on the ground.

Senator BLUMENTHAL. Thank you. Thank you, Mr. Chairman.

Senator LEE. Thank you very much, Senator Blumenthal.

Let us sort of pick up where we left off. I want to respond, first of all, to a couple of those points that I think are relevant.

With respect to the straightaway in Utah, this is somewhat familiar to us. We have these salt flats in Utah where they take cars out that can go hundreds of miles an hour. I assume he means a straightaway on a national or State road.

But there is a difference between deciding not to post a police officer there and issuing a permit saying you may exceed the speed limit and if you are caught going up to 75 miles an hour, even though that is in excess of the lawful posted speed limit, you will not get a ticket. There is a distinction there.

There is, moreover, the fact that another hypothetical question that I brought up that I was disappointed that she did not agree to address head-on was one involving a hypothetical future President, maybe a Republican, maybe a Democrat, I do not know, but somebody who decides, you know what, I do not like our top marginal tax rates and I think it is morally wrong to enforce a marginal tax rate above 25 percent at the top marginal rate. So I am going to issue a series of letters to people, request them, saying you can pay at the 25 percent rate and no higher and nothing is going to happen to you.

I agree, moreover, Professor Legomsky, that something more like the answer that you provided would have been helpful. I did not have even that and had she provided that answer, we could have then gotten into a deeper discussion about whether or not Congress has, in fact, done this or whether or not Congress did, in fact, based on analysis of the text, create something that could create an exception to allow many, many millions out of the, I do not know, 11 million or 12 million people who are estimated to be inside the United States illegally—did Congress really create something that could create an exception that potentially swallowed the rule or comes very, very close to it.

Let us turn now to Professor Rosenkranz. You have not had a chance to chime in on this issue. Tell me what you think about my hypotheticals. What would you do if somebody in your class refused to answer it?

Professor ROSENKRANZ. I was just going to say, Senator, I think your tax hypothetical is exactly right and indistinguishable from the current situation. I do not understand a principled way on which to distinguish those two cases.

I would think a Republican President would be absolutely within his rights to cite this precedent and do as you suggest, if this were constitutional. I think it is not.

Professor TURLEY. Senator, I should clarify that we are more demanding at GW than at Georgetown in terms of how our students answer questions.

[Laughter.]

Professor TURLEY. So you have to put that into your consideration.

Senator LEE. Good. Good. I hope you make that clear on your applications to law school, too, about how demanding you are.

[Laughter.]

Senator LEE. Everybody hates, especially in their first year of law school, to get called upon in class. Another point that I think deserves to be mentioned here is that within this framework there has been discussion of the fact that there remains some discretion on the part of our immigration enforcement authorities in this country, even after the November memorandum, even after DACA and DAPA and so forth.

It is different than the way prosecutorial discretion normally works. The way prosecutorial discretion normally works is that you say we have got finite resources, we are not going to prosecute everybody. We are going to sometimes not do it because perhaps we think the circumstances of the case do not trigger any kind of moral outrage and we are just not going to go in that direction.

There is also just the practical reality effect. You are not going to be able to get everybody. But that operates as an exception to the normal rule that if you break the law, you can expect that prosecution is at least some possibility.

Whereas here, even to the extent you can say that there might be some discretion to decide not to enforce the law, they still make clear, these presidential—these Executive decisions still make relatively clear that they intend, as long as these criteria are satisfied, to not enforce the law, that they are not going to enforce the law, and they do issue documents saying you may work.

So I refuse to accept this as just an act of either ordinary garden variety prosecutorial discretion and I also refuse to accept as an article of faith the fact that Congress would have ever—would ever or did, in fact, in this circumstance give so much discretion to the President of the United States, to the Attorney General, to the Secretary of Homeland Security so as to create a loophole that could swallow a very substantial chunk of the entire rule.

This is just not consistent with the way the Constitution of the United States has historically functioned.

I am getting back to how I opened. I do think that these are relevant questions. Yes, they are different in kind than the kinds of questions that deal with someone's résumé or someone's professional qualifications, but we are looking here at a very specific kind of job, someone who is taking the role as Attorney General of the United States.

We have seen—we have heard testimony from several of you today that this is a Department that has some real serious problems right now, problems that really make the hair stand up on the back of my neck sometimes, and that was reiterated today with some of the testimony that I heard.

So I walked into that hearing yesterday wanting, hoping, frankly expecting to really like Ms. Lynch, and I do like her, and she met

with me in my office before the hearing and I liked her. I expected that I might be able to go either way on this, that I might well end up supporting her.

I did not feel comfortable at the end of the day yesterday with the idea that I could vote for her because of the fact that I did not get answers to questions that I find very troubling. And I found it a somewhat cavalier answer, a somewhat cavalier response to suggest that she needed more facts when some of these were very basic questions.

I see my time has expired. Do we have any Democrats here? Just making sure we did not have anybody in the anteroom. I am told that Senator Cruz is next at bat.

Senator CRUZ. Thank you, Mr. Chairman. I want to thank each of the members of this panel, a very distinguished panel to come together and address some very important issues facing this country.

I want to, at the outset, extend my apology that earlier in the hearing, the Senator from Rhode Island characterized the testimony that we have heard from witnesses on this panel as "conspiracy theories and sound bites for Fox News."

I do not think that is an accurate characterization of the learned testimony that this panel of witnesses has given to this panel and I apologize that you are subjected to having your character impugned in that manner by a United States Senator.

I think this panel has focused on some very important issues, issues that need to be highlighted. I would note that Ms. Engelbrecht is a constituent of mine and a friend. I have long thought highly of your commitment to public engagement, your volunteer efforts to make a difference in our political discourse.

I wanted to ask you, as a citizen who engaged in the political process, how did it make you feel to be targeted by the Government for persecution?

Ms. ENGELBRECHT. It takes your breath away when you do not know quite where true north is and it begs the bigger question of what is this country really and where am I raising my children, where is their safe harbor. And that is why I think that this panel and these questions that we are discussing here today are critical. We have to understand what we have just come through, what we are still in, if we know where we want to head, and I hope we want to head in a decidedly different direction.

Senator CRUZ. It was some decades ago that President Richard Nixon attempted to use the IRS to target his political enemies. He did not succeed in those attempts, but he was nonetheless roundly decried in a bipartisan manner.

In this instance, the attempt, sadly, bore fruit and it has been well over a year since the news broke.

Let me ask you, Ms. Engelbrecht. Do you feel, in the over a year that has transpired, do you feel that the truth has been uncovered and that justice has been served?

Ms. ENGELBRECHT. Oh, no, absolutely not. Just the fact alone that I have still not been interviewed or met with nor have any of the other groups that I know of that were part of this targeting scandal, how you can continue on under this ruse that that is ever going to arrive at any kind of conclusion is mystifying to me.

We seem to continue to find more and more evidence and it continues to get further and further buried until I guess they hope people just forget, and that is why I keep showing up. I hope they do not forget.

Senator CRUZ. Yesterday I asked Ms. Lynch if she thought it was appropriate to have the Department of Justice investigation into the IRS targeting and abuse of power led by a major Obama donor and Democratic donor who has given over \$6,000 to President Obama and the Democratic Party, and she said she found nothing objectionable about that and she flat out refused to appoint a special prosecutor, much as Eric Holder has refused to appoint a special prosecutor.

Let me ask you, as a citizen, do you have faith in the impartial administration of justice with an investigation being led by a major Democratic donor?

Ms. ENGELBRECHT. I take so much exception to that appointment and to the way that that division has conducted itself that I, quite frankly, do not even know where to begin.

Yes, I think that there is an awful lot wrong with it and it is just sad that they are not held to account to explain their actions.

Professor ROSENKRANZ. Senator, I might just mention a constitutional dimension of this particular scandal. Discriminatory enforcement would have horrified the Framers, and this kind of discrimination would have horrified them more than any other: discrimination on the basis of politics.

The single most corrosive thing that can happen in a democracy is for incumbents to use the levers of power to stifle their adversaries and entrench themselves. It casts doubt on everything that follows.

So it really would have been their deepest, deepest concern constitutionally.

Senator CRUZ. Thank you, Professor Rosenkranz. I certainly agree with that observation and I would note that discriminatory prosecution is often intended to have the effect and, in fact, has the effect of stifling further speech.

Ms. Engelbrecht, have you heard concerns of other citizen activists that perhaps they should not speak out or get involved because they, too, might be targeted?

Ms. ENGELBRECHT. Absolutely. The IRS is arguably the most feared agency in possibly the world and there are an awful lot of folks out there that just packed up their tent and stopped their little community organizations because they did not want to be a party to what they saw unfolding.

Senator CRUZ. I have to say it was disappointing yesterday that Ms. Lynch also expressed no concern about the First Amendment rights of citizens, about the effect of the IRS targeting citizen speech, and about the effect of both bias and conflict of interest and the appearance of bias and conflict of interest on the impartial administration of justice.

I want to shift to a different set of issues, which is the pattern of lawlessness of this administration, and I want to focus on a line of inquiry that we had yesterday with Ms. Lynch concerning prosecutorial discretion. I want to address this question to Professor Turley.

Let me say, Professor Turley, I commend you for having the courage to speak out about your concerns about the constitutional dimensions of the conduct of the Executive. I recognize that that has not been easy for you to speak out and I suspect you have heard more than a little grief in the faculty lounge for having done so.

So let me say thank you for having the courage of your convictions. I wish we saw a lot more Members of this body with similar courage of convictions.

Yesterday I asked Ms. Lynch if she agreed with the reasoning of the Office of Legal Counsel that under the theory of prosecutorial discretion, the administration could decline to enforce immigration laws against 4 million to 5 million people in a categorical manner and, beyond that, could affirmatively issue work authorizations, print documents that purport to authorize them to violate Federal law and work in direct contravention to Federal law.

Ms. Lynch said that she found that OLC reasoning persuasive.

Do you agree with that assessment?

Professor TURLEY. I have serious problems with the reasoning for a couple of reasons of my own. First of all, much of what we do when we look at separation of powers is to look for limiting principles. We are in a system of government that is shared and limited in its nature.

And part of the problem that I have with the administration's position on things like immigration is that it lacks that type of limiting principle.

To respond to my colleague, whom I have a great deal of respect for, I do not see this as a matter of discretion. First of all, I am not too sure if it really does mean what my friend said, why they bothered even saying it, because that would make it just a standard prosecutorial discretion of people who are boots on the ground. I do not know why you would even issue this if it meant what my friend has said.

But, second, if you look at that letter from immigration faculty, as I did, once again, it raised this issue—what is the limiting principle? The letter seemed to suggest that as long as you are deporting one person, everything before that point is a matter of discretion. I cannot believe that could possibly be true.

If that were true, then virtually any law could be shut down except for one case and you could claim you are just exercising discretion.

I do criminal defense work when I am not teaching and I think if I went to a prosecutor and said, look, I would like you to basically give my guy a walk because this whole category that he is a member of really should not be subject to this type of enforcement, I think most would look at me like I had two heads. They certainly would not give me much help on that.

There is a legitimate question of prosecutorial discretion, but this is not one that I recognize. But my concern really, as a constitutional scholar, is if this is prosecutorial discretion, I do not know what would not be prosecutorial discretion.

And this notion that is developed from prosecutors, is not, obviously, in the Constitution, would swallow the obligations of the President. Any discretion that my friend talked about in terms of

setting policies and priorities has to be defined within the context given to the administration by Congress.

Senator CRUZ. Professor Turley, I very much agree. And my time is expiring, but I want to ask one final question, which is I agree with you that the question is where do you draw the line.

If the President can, through discretion, simply refuse to enforce a major portion of immigration laws as it concerns millions of individuals, what other laws can the President unilaterally refuse to enforce?

And yesterday I asked Ms. Lynch about a couple of examples. Number one, could a subsequent President instruct the Secretary of the Treasury: "Do not collect taxes in excess of 25 percent"; and, number two, I asked could a subsequent President instruct the Department of Labor: "You shall not enforce any of the Federal labor laws on the books against the State of Texas; the State of Texas is hereby immune from every Federal labor law that has ever been passed."

To both of those hypotheticals, Ms. Lynch refused to answer, refused to say what I think is the obvious constitutional answer, which is, of course, a President cannot do that.

So the question I want to ask Professor Turley and I want to give an opportunity for everyone on this panel, anyone on this panel who wants to engage: Does anyone on this panel disagree that it would be unconstitutional for the President to refuse to enforce the tax laws or the labor laws or the environmental laws? And if you think that would be unconstitutional, does that not necessarily lead one to the conclusion that the President's Executive amnesty is likewise unconstitutional?

Professor Turley, we will start with you.

Professor TURLEY. I believe those examples would be unconstitutional if the President claimed that authority.

Professor LEGOMSKY. I actually agree with both Senator Cruz and Senator Lee that there is a difference between saying we simply will refrain from prosecuting and saying we will give you deferred action and a work permit.

But on the specific question that you have asked just now, I do think that a decision to not enforce the entire immigration laws or not enforce the entire tax laws would clearly exceed the President's legal authority.

But that is not even close to what we have here. As I mentioned a moment ago, even after these new policies are fully operational, there will still remain in this country at least—and this is a conservative estimate— 6 million to 7 million undocumented immigrants to whom these policies do not apply, and the President still will have only enough resources to go after fewer than 400,000 of them, which means that nothing in these policies will prevent the President from continuing to enforce the law to the full extent that the resources that Congress provided him will allow.

Senator CRUZ. Let me briefly ask a clarification on your example. The reason you said the Executive amnesty is constitutional is because there exists some substantial subset of people against whom the laws are enforced. Well, let us take the labor law example. If Texas were exempted, there would be 49 States, a whole bunch of

people you could enforce the labor laws against. So would that satisfy the test you have just put forth?

Professor LEGOMSKY. If I understood the hypothetical correctly—

Senator CRUZ. Hang on one second. In the interest of time, after he answers this one, we are going to have to turn to Senator Franken. We have got votes coming up, so we have got to keep moving. Thank you.

Professor LEGOMSKY. I just wanted to make sure I understood the hypothetical correctly. And your hypothetical is the President enforcing the law in one State, but not in the other States or vice versa.

One of the limitations I think is that the particular priorities have to be rational. I think the discrimination against the residents of one State would fail that test.

Along similar lines, my friend, Mr. Turley, says that the law professor's letter was making the claim that as long as even one person is deported, then it is okay. There was no such claim in the letter, which I know very well.

There was certainly no implication in the letter that all you would have to do is deport one. The point the letter makes is that the President is fully spending all the enforcement resources that Congress has provided. The President is not a magician. He cannot spend resources he does not have, and that is why that example is very different from the ones that have been hypothesized.

Senator CRUZ. Thank you very much.

Mr. Franken.

Senator FRANKEN. Thank you. I want to thank all the witnesses for being here today and for your testimony and your patience.

I just want to talk to some of you who know Ms. Lynch. Mr. Barlow, thank you for your service to the Justice Department and for coming here today to speak on behalf of Ms. Lynch.

As you know, the Attorney General must be both an excellent leader and an open-minded collaborator. The Attorney General must develop and coordinate policies among the various components of the Justice Department with other agencies.

Based on your experience serving with Ms. Lynch on the Attorney General's Advisory Committee, how would you characterize her leadership style?

Mr. BARLOW. She is a leader among leaders, Senator. I would describe her style as being inclusive, thoughtful, careful, deliberative, and she is someone who is seeking consensus wherever it may be found.

I have also seen her recognize that occasionally the consensus cannot be reached and, when it could not be reached, making sure that there was space for dissent so that all parts of the issue could be fully examined.

Senator FRANKEN. Thank you.

Ms. Fedarcyk, thank you for your service to the FBI and for being here today. You served with the FBI's New York office for 25 years and have worked with many U.S. Attorneys. In your testimony, you noted a wide range of cases that you worked on with Ms. Lynch and the window that this gave you into her legal acumen, her leadership style, her character.

How would you rate Ms. Lynch's performance as U.S. Attorney and could you elaborate on the skills that you have observed that would speak to her ability to serve in the role of Attorney General?

Ms. FEDARCYK. Thank you, Senator. And just by way of clarification, I was in New York for 2 years before I retired and during those 2 years had the opportunity to work with Loretta in her capacity as the United States Attorney.

Senator FRANKEN. Oh, sorry.

Ms. FEDARCYK. We undertook any range of significant and complex investigations ranging from national security through the complex financial frauds, all the way through the panoply of the criminal violations that include violent gangs and other types of violent offenders.

I had a very close opportunity to observe Loretta during the course of these investigations, but also beyond the conduct of making decisions about cases and timelines for take downs and the operational considerations, although those were extraordinarily important, clearly, because the symbiotic relationship is such that the New York office and, I would argue, the FBI writ large cannot do its job without that kind of symbiotic relationship with the U.S. Attorneys.

So my observation of Loretta in that role was that she led from the front. She instilled qualities within her office, gave them the resources, the opportunities to take on and grow themselves as leaders within the office. But she was not afraid to become intimately involved because she wanted to know what was going on with the cases and not to micromanage.

And I think that is one quality of a true leader, to empower her people to do a great job by backing off a little bit, but still staying involved with the cases and knowing what is going on within her office.

I think one of the other characteristics that I noticed that I do not think I see a lot in executives is her ability to understand vertical organization, but at the same time develop horizontal relationships, particularly within the community.

So in a very structured environment, she was very comfortable whether she was talking with an executive or all the way down to, let us say, a brick agent or a line police officer; the ability to talk to individuals, make them feel immediately at ease, make them feel that they are actually contributing and that she is listening to what she is talking about and what they are talking about.

Likewise, when we talk about the horizontal view across a community, she was very engaged with not just the law enforcement community from local, State, Tribal, Federal, but also the communities that we were serving. And, again, that leadership of leading her office to understand the concerns of these communities was integral to supporting the successes of the offices.

So I think she brings a lot of—

Senator FRANKEN. Let me ask you about that, because that is about community engagement. So let me ask you about that style. I think that is very important with the U.S. Attorney. I see how important it is in Minnesota.

What was her style of engagement in terms of the community?

Ms. FEDARCYK. Very engaged and someone who was not afraid to engage many different community groups and have very frank discussions about concerns and issues, giving everybody an opportunity to provide input, and that I think is incredibly important because understanding the community you serve is part and parcel of representing the system of justice and making sure that if there are disparities in those communities, if there are issues in those communities, that you understand what they are so that you can help drive a change to make the system of justice better in addressing those concerns.

With respect to the law enforcement community, she was actively involved in many of the task forces, very supportive of them as a concept that brought departments and agencies, large and small, together to tackle entrenched crime issues, terrorism, and would personally attend executive briefings.

And her philosophy was that we were all in this together, that it was incumbent on law enforcement across the board to work shoulder-to-shoulder to really protect this country and to tackle issues that no one agency could do by themselves.

So I personally thought that her leadership skills were outstanding. I viewed her as somebody that I could go to for sound judgment, as a sounding board, and receive sage and reasoned advice in return.

Senator FRANKEN. Reverend Newsome, I am getting the picture of a very impressive leader with those kinds of impressive skills. But you came to testify today I think on where that comes from in a moral sense.

Can you speak to where that comes from in terms of her compassion and—

Reverend NEWSOME. Well, I think I can, Senator. Thank you, Senator, for the opportunity. Let me try to be as succinct about this as I possibly can.

Senator Sessions, glad to be reunited with you. We worked on a church-burning project some years ago when I was Dean of the Howard School of Divinity, very effectively. Thank you.

But the word impressive does not get it. She is a rare individual. I study people from the standpoint of a religious biographical perspective. So that when you begin to look at what I might call at this point in time the genius of character, you try to sense if it has come down through the generations.

I mentioned in my written statement that her grandfather was a Baptist minister, but three grandfathers before then, and they served their congregations and their communities with daring, with distinction, and, above all, wisdom, and that wisdom was borne of a depth of insight into human nature as to how leaders should best behave and be effective in garnering the following, and leading in a way that works for the good of all.

Loretta, and I have seen this throughout the years, is the kind of person who can relate transparently enough to inspire trust and confidence. So that you do not have to work a long time wondering if what you are seeing is truly honest.

And this plays its way out in the sense that she is a due-diligence kind of person. I understand the hypothetical kinds of issues and questions, but my own background as a scholar would say,

well, at best, a hypothetical only approximates a real-life situation and in a real-life situation, character really comes forth when you do the kind of due diligence that puts you in a position to make the quality of judgments that makes for a positive difference.

This is in her bloodline. This is in her spiritual DNA. I do not know if her father is still in the room, but I can tell you that it has played out in the way that he has provided leadership in North Carolina. Whether he had to stand alone or stand with 1,000, it was the truth, the truth, the right thing and the right thing, and character and character and character over again.

I do not want to trivialize this process by using a sports metaphor, but I am an old broken-down football player that played at Duke when we were still winning games.

Senator FRANKEN. That was quite a while ago.

[Laughter.]

Reverend NEWSOME. Quite a while ago. But we tend to think in terms of a franchise kind of player. She is an exceptional human being and I cannot avoid the sense of passion I feel right now for the good that would come to our Nation in having a person who would be good, absolutely superb, and even healing our Nation through the responsible discharge of her duties as the U.S. Attorney General.

Senator FRANKEN. So you would be for her being confirmed.

[Laughter.]

Reverend NEWSOME. I will be mildly for her, yes.

Senator FRANKEN. Although you cheapened it with a sports metaphor, it was powerful testimony.

[Laughter.]

Senator FRANKEN. Thank you. Thank you, Mr. Chairman.

Senator CRUZ. Thank you, Senator Franken.

Senator SESSIONS.

Senator SESSIONS. Thank you for calling for us. A lot of people we have disagreements with can be wonderful people and I do sense that about her and I told her that—well, I was talking about her, I believe—but she was raised right, I can tell that.

So sometimes you just get caught up in things. Issues become big and an individual becomes a focus of the controversy.

Sheriff Clarke, thank you for your leadership. Now, I had here right in front of me—and I have it now—a piece put out just some time ago saying that there were 36,000 convicted criminal aliens in detention that were released and that group of people convicted were convicted of crimes such as homicide, sexual assault, kidnaping, and aggravated assault.

And I notice one individual was just arrested for murdering a 21-year-old convenience store clerk in Mesa, Arizona, on January 22nd of this year after having been in ICE custody on a drug and gang-related felony burglary conviction, but was released on bond after a few days.

If you release 36,000 people who have been convicted of crimes, based on your experience in law enforcement, can't we expect that that group is likely to commit the kind of crimes I just mentioned? Isn't that pretty predictable?

Sheriff CLARKE. Thank you, Senator. Yes, if for no other reason because of the recidivist nature of crime regardless of what demo-

graphic is involved with it. I would say releasing 3,600 into communities that do not have the support structures is, at best, dangerous policy.

Like I said, they do not have the support structures in place. And then the thing about the—when we start talking about the criminal aliens, the first thing they are going to do is flee. That is the first thing they are going to do.

My experience in working with ICE—we do not enforce immigration law, but we do cooperate with Federal agencies in the pursuit of justice like we do any other Federal agency. But they come with many aliases, difficult and it takes a long time to identify them, but they realize, the individual that is released on bail, they realize that it is in their best interest to flee. And then they turn up in another community—I will just speak to Milwaukee County.

We have had those same horror-type stories of individuals who have been brought to ICE's attention and, for whatever reason, they decided not to put a detainer on them or had a detainer and released it; the individual is let out on bail and then goes on to engage in an even more heinous act.

And, sure, the easy ones, Senator, are the ones who are involved with murder, sexual assault. Those folks are probably not going to get out on bail. We do not have to worry too much about them.

Senator SESSIONS. Well, as this report indicated, a number of them, like 193 of the 36,000 that were released included—were homicide convictions. So you are right to assume that serious crimes—it would be almost unbelievable that they were being released, but data shows that a lot of them are the most serious crimes—are being released.

Sheriff CLARKE. Yes. I think sometimes some of the reports or some of the rhetoric used in a discussion is on the lenient side. They call them low-level offenders, but some of the stuff that I see that they have been involved with are not literally low-level offenders.

Senator SESSIONS. Well, Sheriff Clarke, let me just say you are responsible for protection of people in Milwaukee and that area and the Federal statute says someone convicted of a serious felony shall be deported. It does not say that ICE has an opinion about this, it says they shall be deported. Does it make your life more difficult, does it place the people of Milwaukee at greater risk if the officials are not following the law and deporting people who have been convicted of serious crimes?

Sheriff CLARKE. Sure it does. In my limited knowledge of legal language, "shall" is not discretionary. So I find that problematic when that happens.

Senator SESSIONS. So do you not think it is common sense and just that if a person's in the country illegally and on top of that they commit a serious crime, they should be deported?

Sheriff CLARKE. Yes. I think it is beyond common sense. I think we have a duty, a duty to protect people.

Senator SESSIONS. And the law, of course, requires that. It is just too often not being followed in an effective way.

Professor LEGOMSKY. Senator, may I just add that I think—

Senator SESSIONS. Yes.

Professor LEGOMSKY. Sheriff Clarke has just made one of the strongest arguments in favor of the President's Executive actions. The main point of the new prosecutorial priorities is to be able to focus resources on precisely the individuals whom he is describing, and hopefully it will have that effect.

I do not know in this case why the State authorities released a person. If it was while the person was pending trial, they must have thought that it is safe to release them. So I am not sure why the onus is shifting to ICE, but that aside, this is what the administration is trying to accomplish.

Senator SESSIONS. Well, this is not a matter of discretion, Mr. Legomsky. I know you served with the USCIS. This part of it is mandatory, the point I am raising. We are entering into an utterly lawless system here. Nothing Congress passes, apparently, has the ability to be effectuated in reality. That is the problem.

Congress will pass things and they do not happen. We mandated a fence, 700 miles. It has not happened. We said there should be an exit/entry visa, which the 9/11 Commission has hammered us for not completing as law required, and it still has not been completed.

Are you aware that the group that you worked with, the Federation of Government Employees, who represent USCIS, has opposed this bill vigorously?

Professor LEGOMSKY. Yes.

Senator SESSIONS. And say it will not work and is not helpful.

Professor LEGOMSKY. Well, this is the very same group whom some people are suggesting will refuse to obey the Secretary's instruction to exercise discretion and will instead rubberstamp these cases. So I think—

Senator SESSIONS. Well, let me ask you about discretion. That is Professor Eastman. In his testimony before the House on discretion, he says there is nothing in the memo to suggest that immigration officials can do anything other than grant deferred action to those meeting the defined eligibility criteria.

Indeed, the overpowering tone of the memo is one of woe to line immigration officers who do not act as the memo tells them they should, a point that has been admitted by the Department of Homeland Security officials in testimony before the House.

In the House, Chairman Goodlatte of the House Judiciary Committee, said, "DHS has admitted to the Judiciary Committee if an alien applies and meets the DACA eligibility criteria, they will receive deferred action. In reality, the immigration officials do not have discretion to deny DACA applications if the applicants meet these criteria." I think, Professor Rosenkranz, you indicated it might be an illusory thing here. Isn't that proof that really it is illusory discretion? In fact, it is mandatory.

Professor ROSENKRANZ. Absolutely.

Professor LEGOMSKY. Well, the memo says precisely the opposite, Senator, with respect. It says that these are cases that "present no other factors that, in the exercise of discretion, make the grant of deferred action inappropriate." At the very end there is even more explicit wording: "the ultimate judgment as to whether an immigrant is granted deferred action will be determined on a case-by-case basis." So the memo refers explicitly to discretion.

Professor ROSENKRANZ. Senator——

Senator SESSIONS. Well, we said we are going to do an exit/entry visa and it is not. The truth is that officials are going to approve the people if it meets the DACA—meets the memorandum standards.

Professor ROSENKRANZ. The important thing to notice is that it flips the presumption, right? The presumption is that the law will not be enforced and somebody might have discretion to enforce the law in a particular case, but this is turning prosecutorial discretion on its head. The presumption in general is that law will be enforced and discretion will be used to create an exception to the rule. Here, the enforcement is clearly going to be the exception to the rule, if it happens at all.

Professor LEGOMSKY. Except that the entire deferred action memo is the exception, right? The norm is that you do get deported if you fall within one of the deportability grounds. This memo lays out an exception: If you meet the following criteria, then USCIS officials would have the discretion, on a case-by-case basis, to defer your——

Senator SESSIONS. Well, just briefly, if the people do not meet the standards and somebody does get turned down—well, the projection is a little less than half the people, 5 million out of 11. What if somebody is turned down, are they going to be deported?

Professor LEGOMSKY. Generally, I would think, yes. If they bring their presence to the attention of the enforcement authorities and if it fits within the prosecutorial discretion priorities, then I cannot think of any reason that ICE would not——

Senator SESSIONS. Well, they are not going to be deported. The only ones that are being deported today is, as I think you know, people who commit serious crimes, and we find out even they are not being deported. We have reached a lawless stage in immigration and the American people are not happy about it. They have a right to demand that their laws be enforced and the President's actions are some of the most dramatic steps to violate plain law that I have ever seen in my experience.

Thank you, Mr. Chairman. My time is over. You are kind.

Senator LEE. Thank you, Senator Sessions.

As we were preparing for yesterday's hearing, I found a quote that I would like to talk about in a minute for a moment, a quote from a speech given by Ms. Lynch about a year ago in which she made the following statement. It caught my attention because it raises some alarm bells.

It says: "Fifty years after the March on Washington, 50 years after the civil rights movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for. We stand in this country. People try and take over the Statehouse and reverse the goals that have been made in voting in this country. But I'm proud to tell you that the Department of Justice has looked at these laws and looked at what's happening in the Deep South, and in my home state of North Carolina, has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens."

When I read this, for obvious reasons, I immediately became concerned. I was wondering what it was that she was talking about,

what laws there were out there, what legacy of the civil rights era that was trying to be overturned. Ms. Engelbrecht, can you guess as to what she might have been talking about referring specifically to her home State of North Carolina?

Ms. ENGELBRECHT. I cannot. And I reviewed the same comments that you referred to, which was, I think, taken from a speech in February out in Los Angeles. What continues to boggle the mind is that the vast majority of Americans want, understand, and appreciate the need to try to safeguard our elections. The thought that asking a voter to prove they are who they say they are is somehow discriminatory just—you know, it seems to me to be much more about pushing a political agenda than protecting the people.

Senator LEE. You know, I wondered about this so I asked one of my colleagues who was on this Committee with me, Senator Thom Tillis from North Carolina, who as it turns out at the time she gave this speech was the Speaker of the House in North Carolina.

I asked him what this was about, what she was referring to. These are pretty bold statements and if someone is going to accuse a State legislative body of moving to undo the legacy of Dr. Martin Luther King, of trying deliberately to diminish voting rights in this country, I feel like we need to know what that is.

He suggested to me that it might have been directed toward a voter ID law that was passed by the State of North Carolina at the time that Senator Tillis was the Speaker of the North Carolina House of Representatives. I asked him about this law a little bit and he told me that when it came forward there was concern about voter fraud, about the risk of voter fraud in North Carolina.

He said, look, I want to find the most fair statute that there is on the books anywhere in this country and I want to make it that much fairer. I want to put the belt and the suspenders, and another belt and another set of suspenders, on it to make sure that no one's voting rights are diminished at all.

So they started with the model of an Indiana statute, a model that was itself quite cautious. It continues to allow no-excuse absentee voting without an ID, it accommodates individuals with religious objections to photography, providing them with a way, an alternative means, of proving their identity, pays for an ID issued by the Department of Motor Vehicles without any charge to the voter.

So they started with that as the model and then they added a whole bunch of additional protections that neither Indiana, nor any other State that has adopted any law like this; it had a two-year ramp-up period, a special North Carolina program designed to allow home-bound individuals to get a photo ID, another Government program that not only pays for the Government-issued ID, but also allows for documents for a register of deeds or the Department of Health and Human Services that can be used to verify ID. It establishes a million-dollar trust fund to reach out to those people who might not have IDs, and this list goes on and on and on. This is the most cautious, carefully protective statutory scheme that I can imagine in this area.

If in fact this was the target of this description, do you think it is fair to describe this legislation that way, as an attempt to undo the gains of the civil rights movement and the gains of Martin Lu-

ther King and those who fought with him valiantly to protect voter rights in America?

Ms. ENGELBRECHT. Absolutely not. I do not think that it is appropriate or fair, and if that is truly the belief that is held, we need to understand what is behind that because it belies anything that you have just read in making sense.

Senator LEE. With your involvement in efforts to prevent voter fraud, what would you say to those who have made the argument that there is no such thing as voter fraud and therefore we need not be concerned about it, and that the only reason somebody could push for it would be because they subjectively want to undermine voting rights? What would your response to that be?

Ms. ENGELBRECHT. I mean, I think that our history is replete with examples of voter fraud and I think that it is something that we should take very seriously because you do not need a whole lot of fraud. You just need a little bit in the right places. And the less that you create a system that secures everyone's vote, the more open it is, obviously, to these kinds of manipulations that just further divide our country in ways that serve no purpose.

Senator LEE. Thank you.

Sheriff Clarke, I wanted to talk to you a minute about the relationship between the Department of Justice and law enforcement right now. How would you describe the relationship between law enforcement and the Department of Justice?

Sheriff CLARKE. Thank you, Senator. Frayed. I am not going to engage in hyperbole or exaggerate, but we cannot have even a frayed relationship. The mission statement that I cited early on, you know, talks about partnerships and, just from the Milwaukee experience, anyway, we need the help of the U.S. Attorneys' Office in the Eastern District of Wisconsin to deal with instances of the violent crime, the repeat offender.

We are not talking about the first-time offender, we are not talking about people who may deserve some sort of remedy for some transgression they made. I talked about the 10-year-old, Sierra Guyton. Both of those individuals, felons, convicted felons. The prohibition of not being able to be armed—or a firearm anyway—as a convicted felon, means nothing to them.

The State has not shown a willingness at the State level. I think it is a legitimate question to ask, What are they doing at the State level with some of these cases? Too much leniency. I will tell you one thing from a deterrent standpoint, Senator: Criminals fear the Federal system; they just do.

So if we were to have, for instance, cases of—it was very creative legally, a case in Milwaukee where the—Jim Santelle, the Assistant U.S. Attorney, who we do have a great relationship with, used the Hobbs Act to charge career hold-up men who have gone on a robbery spree. One of them I believe recently received a 15-year sentence. Plus, they used a firearm in the commission of those crimes.

But they do not have to charge all of them. I know they do not have—I heard about the prosecutorial discretion. But I think if we take this elephant and try to eat it one spoonful at a time—the elephant being violent crime that is ravaging all kinds of urban centers in America—but if we take the worst offenders and subject

them to Federal sanctions, that is going to first of all ensure—get a better chance at a conviction and you have got a better chance at a more lengthy sentence for the person who just has not cared, if you will, about any State sanctions that have been applied.

So that is the sort of help we need from the Federal prosecutor's office in Milwaukee. Straw purchases is another one. I will not really rap the U.S. Attorney's Office for straw purchases, but law enforcement is really not bringing in the cases. The ones they are, they are dealing with very well. But the armed violent offender is the one I would like to see go the Federal route.

Senator LEE. Thank you.

Today we have heard from a number of witnesses who have testified as to Ms. Lynch's qualifications, which are themselves impressive. It is great in particular to see my friend David Barlow. I know of no finer lawyer or human being any more than David, so it is always great to see you. Each of you have put a lot of thought into your testimonies. I appreciate both your written testimonies and what you have spoken to us today.

The record for this hearing will remain open for one week for Members to submit written questions for the record.

The hearing will be adjourned. Thank you.

[Whereupon, at 3:04 p.m., the hearing was adjourned.]

[Additional material submitted for the record for Day 1 and for Day 2 follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Attorney General Nomination”

Wednesday, January 28 and Thursday January 29, 2015
Hart Senate Office Building, Room 216
10:00 a.m.

Panel I

Loretta E. Lynch, to be Attorney General of the United States

Panel II

Ms. Sharyl Attkisson
Investigative Journalist
Leesburg, VA

Mr. David Barlow
Partner
Sidley Austin LLP
Washington, DC

Mr. David A Clarke, Jr.
Sheriff
Milwaukee County, Wisconsin
Milwaukee, WI

Ms. Catherine Engelbrecht
Founder
True The Vote
Houston, TX

Ms. Janice K. Fedareyk
Fedareyk Consulting LLC
Crownsville, MD

Professor Stephen H. Legomsky
John S. Lehmann University Professor
School of Law at Washington University
Saint Louis, MO

The Reverend Doctor Clarence Newsome
Cincinnati, OH

Professor Nicholas Quinn Rosenkranz
Professor of Law
Georgetown Law School
Senior Fellow in Constitutional Studies
Cato Institute
New York, NY

Professor Jonathan Turley
J.B. and Maurice C. Shapiro Professor of Public Interest Law
George Washington University Law School
Washington, DC

**Opening Statement of Attorney General-Designate Loretta E. Lynch
U.S. Senate Confirmation Hearing
Wednesday, January 28, 2015
Washington, D.C.**

Thank you, Chairman Grassley, Senator Leahy, and distinguished members of the Committee. I am honored to appear before you in this historic chamber, among so many dedicated public servants. I want to thank you for your time this morning – and President Obama for the trust he has placed in me by nominating me to serve as Attorney General of the United States.

It is a particular privilege to be joined today by members of my family – including my husband, Stephen Hargrove, my father Rev. Lorenzo Lynch, my brother Rev. Leonzo Lynch and his wife NiCole, as well as several other family members who are here today.

Mr. Chairman, one of the privileges of my position as United States Attorney for the Eastern District of New York is welcoming new attorneys into the office and administering to them the oath of office. It is a transformative moment in the life of a young prosecutor. As they stand before me, prepared to pledge their honor and their integrity, I remind them that they are making their oath not to me, not to my office, or even to our Attorney General, but to our Constitution, the fundamental foundation for all that we do. It is that document and the ideals embodied therein to which I have devoted my professional life. Senators, if confirmed as Attorney General I pledge to you and to the American people that the Constitution, the bedrock of our system of justice, will be my lodestar as I exercise the power and responsibility of that position.

I owe much to those who have worked to make its promise real for all Americans, beginning with my own family. All of them – and so many others – have supported me on the

path that has brought me to this moment, not only through their unwavering love and support, but through their shining examples, and the values that shaped my upbringing.

My mother, Lorine, who was unable to travel here today, is a retired English teacher and librarian for whom education was the key to a better life. She recalls people in her rural community pressing a dime or a quarter into her hands to support her college education. As a young woman she refused to use segregated restrooms because they did not represent the America in which she believed. She instilled in me an abiding love of literature and learning, and taught me the value of hard work and sacrifice. My father, Lorenzo, is a fourth-generation Baptist preacher who in the early 1960's opened his Greensboro church to those planning sit-ins and marches, standing with them while carrying me on his shoulders. He has always matched his principles with action – encouraging me to think for myself, but reminding me that we all gain the most when we act in service to others.

It was the values my parents instilled in me that led me to the Eastern District of New York, and from my parents I gained the tenacity and resolve to take on violent criminals, to confront political corruption and to disrupt organized crime. They also gave me the insight and compassion to sit with the victims of crime and share their loss. Their Values have sustained me as I have twice had the privilege of serving as United States Attorney, leading an exceptional office staffed by outstanding public servants, and these values guide and motivate me even today.

Should I be confirmed as Attorney General, my highest priorities will continue to be to ensure the safety of our citizens, to protect the most vulnerable among us from crime and abuse, and to strengthen the vital relationships between America's brave law enforcement officers and the communities they are entrusted to serve.

In a world of complex and evolving threats, protecting the American people from terrorism must remain the primary mission of today's Department of Justice. If confirmed, I will work with colleagues across the executive branch to use every available tool to continue disrupting catastrophic attacks against our homeland and bringing terrorists to justice. I will draw upon my extensive experience in the Eastern District of New York, which has tried more terrorism cases since 9/11 than any other office. We have investigated and prosecuted terrorist individuals and groups that threaten our nation and its people – including those who have plotted to attack New York city's subway system, JFK airport, the Federal Reserve Bank of New York, and U.S. troops stationed abroad, as well as those who have provided material support to foreign terrorist organizations. And I pledge to discharge my duties always mindful of the need to protect not just American citizens but also American values.

If confirmed, I intend to expand and enhance our capabilities in order to effectively prevent ever-evolving attacks in cyberspace, expose wrongdoers, and bring perpetrators to justice. In my current position, I am proud to lead an office that has significant experience prosecuting complex, international cybercrime, including high-tech intrusions at key financial and public sector institutions. If I am confirmed, I will continue to use the combined skills and experience of our law enforcement partners, the Department's Criminal and National Security Divisions, and the United States Attorney community to defeat and to hold accountable those who would imperil the safety and security of our citizens through cybercrime.

I will also do everything I can to ensure that we are safeguarding the most vulnerable among us. During my tenure as U.S. Attorney, the Eastern District of New York has led the prosecution of financial fraudsters who have callously targeted hard working Americans, including the deaf and the elderly, and stolen their trust and their hard-earned savings. We have

taken action against abusers in over one hundred child exploitation and child pornography cases, and have prosecuted brutal international human trafficking rings that sold victims as young as 14 and 15 years old into sexual slavery. If confirmed as Attorney General, I will continue to build upon the Department's record of vigorously prosecuting those who prey on those most in need of our protection and I will continue to provide strong and effective assistance to survivors who we must both support and empower.

Throughout my career as a prosecutor, it has been my honor to work hand in hand with dedicated law enforcement officers and agents who risk their lives every day in the protection of the communities we all serve. I have served with them. I have learned from them. I am a better prosecutor because of them. Few things have pained me more than the recent reports of tension and division between law enforcement and the communities we serve. If confirmed as Attorney General, one of my key priorities would be to work to strengthen the vital relationships between our courageous law enforcement personnel and all the communities we serve. In my career, I have seen this relationship flourish – I have seen law enforcement forge unbreakable bonds with community residents and have seen violence-ravaged communities come together to honor officers who risked all to protect them. As Attorney General, I will draw all voices into this important discussion.

In that same spirit, I look forward to fostering a new and improved relationship with this Committee, the United States Senate, and the entire United States Congress – a relationship based on mutual respect and Constitutional balance. Ultimately, I know we all share the same goal and commitment: to protect and serve the American people.

Now, I recognize that we face many challenges in the years ahead. But I have seen – in my own life, and in my own family – how dedicated men and women can answer the call to achieve great things for themselves, for their country, and for generations to come.

My father – that young minister who carried me on his shoulders – has answered that call. As has my mother, that courageous young teacher who refused to let Jim Crow define her. Standing with them are my uncles and cousins who served in Vietnam – one of whom is with me here today - and my older brother, a Navy SEAL, who answered that call with their service to our country.

As I come before you today in this historic chamber, I still stand on my father's shoulders, as well as on the shoulders of all those who have gone before me and who dreamed of making the promise of America a reality for all and worked to achieve that goal.

I believe in the promise of America because I have lived the promise of America.

If confirmed to be Attorney General of the United States, I pledge to all of you and to the American people that I will fulfill my responsibilities with integrity and independence. I will never forget that I serve the American people, From all walks of life, who continue to make our nation great – as well as the legacy of all those whose sacrifices have made us free. And I will always strive to uphold the trust that has been placed in me to protect and defend our Constitution, to safeguard our people, and to stand as the leader and public servant that they deserve.

Thank you all, once again, for your time and your consideration. I appreciate the opportunity to speak with you today. I look forward to your questions – and to all that we may accomplish in the days ahead, together, in the spirit of cooperation, shared responsibility, and justice.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Loretta Elizabeth Lynch Hargrove

In 2007, I married Stephen Hargrove. I use Lynch in my professional capacity, including for this nomination.

2. **Position:** State the position for which you have been nominated.

Attorney General of the United States

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office of the United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

4. **Birthplace:** State date and place of birth.

May 21, 1959
Greensboro, NC

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School
09/1981 – 06/1984
J.D. awarded June 1984

Harvard College
09/1977 – 06/1981
A.B. cum laude in English and American Literature awarded June 1981

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Employment Positions

Office of the United States Attorney
 Eastern District of New York
 271 Cadman Plaza East
 Brooklyn, NY 11201
 Position: United States Attorney
 05/2010 – present
 (appointed 04/23/2010; sworn in 05/03/2010)

Hogan & Hartson LLP (now Hogan Lovells)
 875 Third Avenue
 New York, NY 10022
 Position: Partner
 01/2002 – 05/2010

United Nations International Criminal Tribunal for Rwanda
 Arusha International Conference Centre
 P.O. Box 6016
 Arusha, Tanzania
 Position: Counsel to the Prosecutor (pro bono appointment while with Hogan & Hartson LLP)
 07/2005 – 07/2007

Office of the United States Attorney
 Eastern District of New York
 271 Cadman Plaza East
 Brooklyn, NY 11201
 Positions: United States Attorney (appointed 07/18/1999; sworn in 12/28/2000); Chief Assistant U.S. Attorney (“Chief Assistant” and “First Assistant” are used interchangeably within the Department); Deputy Chief and Chief, Long Island Division; Chief of Intake & Arraignments and Deputy Chief, General Crimes; Assistant U.S. Attorney
 03/1990 – 05/2001

St. John’s University School of Law
 8000 Utopia Parkway
 Jamaica, NY 11439
 Position: Adjunct Professor
 09/2000 – 12/2000

Cahill Gordon & Reindel
80 Pine Street
New York, NY 10005
Position: Litigation Associate
09/1984 – 02/1990

Mudge, Rose, Guthrie, Alexander & Ferdon
180 Maiden Lane
New York, NY 10038
Position: Summer Associate
06/1983 – 08/1983

Moore & Van Allen
100 North Tryon Street
Suite 4700
Charlotte, NC 28202
Position: Law Clerk/Summer Associate
06/1982 – 08/1982

Olsten Temporary Services
1 Park Drive
Research Triangle Park, NC 27701
Position: Temporary Position
06/1981 – 08/1981

Non Profit Board Service
Legal Aid Society of New York
Board Member 2006 – 2007
Board of Advisors 2007 – 04/2010

Federal Defenders Service of New York
Board Member 2006 – 04/2010

Brennan Center for Justice at New York University School of Law
Program Advisory Board 2004 – 04/2010

Cyrus R. Vance Center for International Justice
Board Member 2004 – 04/2010

New York Lawyers for the Public Interest
Board Member 2004 – 2009

Office of the Appellate Defender for the First Department
Board Member 2002 – 2008

National Institute for Trial Advocacy (NITA)
Board Member 2002 – 2007

National Institute for Law and Equity
Board Member 2002 – 2007

Other Board Service

Federal Reserve Bank of New York
Board Member 2003 – 2005

Investment Club

Ujamaa Investment Group

Investment club formed as a partnership under the laws of the State of New York. UIG consisted of a group of young professionals who pooled their money and purchased stocks. The club had no employees; I was a member and provided no legal advice.

Position: Partner

10/1994 – 01/1998

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the U.S. Military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

National Achievement Scholarship – 1977

Harvard College Scholarship – 1979

Metropolitan Black Bar Association Trailblazer Award – 2000

National Black Prosecutors Association Norman S. Early Jr. Founders Award – 2000

United States Secret Service Director's Recognition Award – 2001

United States Customs Service United States Customs Ensign Plaque – 2001

United States Drug Enforcement Administration Expression of Appreciation – 2001

United States Postal Inspection Service Presentation of Badges – 2001

Bureau of Alcohol, Tobacco and Firearms New York Field Division Expression of Appreciation – 2001

United States Internal Revenue Service Expression of Appreciation – 2001

New York City Police Department of Internal Affairs Division Expression of Appreciation – 2001

Congressman Major Owens Lifetime Achievement Award – 2002

Milton S. Gould Award for Outstanding Oral Advocacy – 2002

Black Enterprise Magazine "America's Top Black Lawyers" – 2003

Crain's New York Business "100 Most Powerful Minority Business Leaders" – 2003

New York County Lawyers Association Outstanding Women of the Bar – 2004

New York County Lawyers Association Outstanding Jurists & Lawyers of Color – 2005

NAACP Brooklyn Branch Legal Leadership Award – 2007

Assembly of the State of New York Proclamation (recognition of outstanding public service) – 2010
 Federal Law Enforcement Officers Association Foundation Honoree of the Year – 2011
 American Academy for Professional Law Enforcement Long Island Chapter Appreciation Award – 2011
 New York County Lawyers Association Ida B. Wells-Barnett Justice Award – 2012
 U.S. Attorney's Office District of New Jersey Certificate of Appreciation – 2012
 Bedford Academy High School Appreciation Award – 2012
 NOBLE Appreciation Award – 2012
 NOBLE Lloyd Sealy Award – 2012
 Judicial Friends Rivers Toney & Watson Distinguished Service Award – 2012
 Federal Bar Council Emory Buckner Award for Outstanding Public Service – 2012
 U.S. Securities and Exchange Commission, New York Regional Office Appreciation Award – 2013
 National Black Prosecutors Association Norman S. Early Jr. Founders Award – 2013
 Association of Black Women Attorneys Professional Achievement Award – 2013
 Crain's New York Business "50 Most Powerful Women in New York" – 2013
 Society of Professional Investigators Person of the Year – 2013
 National Committee for the Furtherance of Jewish Education Justice Award – 2013
 New York State Inspector General Certificate of Appreciation – 2014
 New York Daily News "50 Most Powerful Women in New York" – 2014
 Touro Law School BLSA Association Trailblazer Award – 2014
 New York County Lawyers Association Certificate of Appreciation – 2014
 Women in Federal Law Enforcement Foundation President's Award – 2014

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Bar Associations

American Bar Association
 New York State Bar Association
 Task Force on Attorney Client Privilege 2005 – 2006
 Association of Black Women Attorneys
 New York County Lawyers Association
 Task Force to Achieve Diversity in the Profession 2000 – 2002
 Metropolitan Black Bar Association
 National Black Prosecutors Association
 Federal Bar Council of New York
 Secretary 2002 – 2005
 Federal Bar Foundation of New York
 Director 1999 – 2002
 Chairman, Board of Directors 2006 – 2009
 Association of the Bar of the City of New York (now New York City Bar Association)
 Member, Membership Committee 1997 – 1999
 Member, Judiciary Committee 1998 – 1999
 Chair, Criminal Law Committee 2001 – 2005
 Vice-President 2007
 Member, Executive Committee 2007

Legal Committees

National Association of Former United States Attorneys 2001 – 2003
New York State Commission on the Jury 2003 – 2004
Eastern District Committee on Civil Litigation 2003 – 2010
Second Circuit Court of Appeals Committee on Admissions and Grievances 2007 – 2010

Selection Panels

Magistrate Selection Panel for the Eastern District of New York 1999, 2002 – 2009
Judicial Screening Panel of Senator Charles Schumer 2002 – 2010

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York State – admitted July 1985
New Jersey – pro hac vice admission 2003 only, not renewed

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

New York State First Department – July 1985
New Jersey State Court – pro hac vice admission 2003 only, not renewed
Eastern District of New York – February 1990
Southern District of New York – January 1990
Second Circuit Court of Appeals – July 1991, lapsed in 2009
In 2009, the Second Circuit instituted a policy that required admitted attorneys to renew admission every five years. I did not renew my admission, as I was not arguing before the Circuit.
Seventh Circuit Court of Appeals – May 2009

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

I have made financial contributions to charitable organizations over the years. I have not included any organizations to which I gave funds and did not otherwise

participate in organizational activities, although the organization may label me a member because of my contribution.

Paul Robeson Independent Democratic Club of Brooklyn, New York 1991 – 1993
National Association of Investment Clubs (NAIC) – Member 1995 – 1998

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify books, articles, reports, letters to the editor, editorial pieces or other published material, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

“Counseling Corporate Clients Under Investigation” published in New York Law Journal, July 7, 2003 – author Loretta E. Lynch
Copy Attached

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

New York County Lawyers Association
Report of the Task Force to Increase Diversity in the Legal Profession
2002 Report
Copy Attached

New York State Commission on the Jury
Interim Report of the Commission on the Jury to the Chief Judge of the State of
New York
June 2004 Report
Copy Attached

New York State Bar Association
Report of the Task Force on Attorney-Client Privilege
March 2006 Report
Copy Attached

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify any testimony, official statements or other communications related, in whole or in part, to matters of public policy or legal interpretation, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

July 2000 – Testimony before the House Committee on the Judiciary, Subcommittee on the Constitution, in my capacity as Department official on issues of federal grand jury practice.
Copy Attached

September 2008 – Testimony before the New York City Council Committee on Civil Rights in my capacity as outside diversity counsel to certain advertising agencies whose hiring and retention policies had come under scrutiny by the Committee and the New York City Human Rights Commission.
Copy Attached

April 2011 – Testimony before the House Committee on Oversight and Government Reform, Subcommittee on Health Care, District of Columbia, Census, and the National Archives, in my capacity as a Department official on issues of health care fraud.
Copy Attached

November 2011 – Testimony before the Senate Committee on the Judiciary, Subcommittee on Privacy, Technology and the Law, in my capacity as a Department official on issues of health care fraud and electronic records.
Copy Attached

September 2013 – Testimony before the Moreland Commission in my capacity as a Department official on issues concerning public corruption in New York State.
Copy Attached

December 2013 – Testimony before the New York County Lawyers Association in my capacity as a Department official on issues concerning the effects of sequestration on federal prosecutors.
Copy Attached

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following (listed in reverse chronological order):

Speeches

November 24, 2014
Association of Inspectors General
Speaker at Fall Training Event
Newark, NJ
Copy Attached

November 18, 2014
Brennan Center
Legacy Awards Dinner – Introduction of Zachary W. Carter
New York, NY
Copy Attached

October 6, 2014
Charles Evans Hughes Memorial Lecture
New York County Lawyers Association
New York, NY
Copy Attached

September 16, 2014
Federal Bureau of Investigation
Cyber Intelligence Workshop – Welcoming Remarks
New York, NY
Copy Attached

September 10, 2014
Farewell Event for Associate Attorney General Tony West
Washington, DC
Copy Attached

August 26, 2014
Women in Federal Law Enforcement
Keynote Speech – Annual Leadership Training
Washington, DC
Copy Attached

August 13, 2014
Convention on the Elimination of Racial Discrimination
Geneva, Switzerland
Copy Attached

June 24, 2014
Women in Law Empowerment Forum
New York, NY
Copy Attached

June 17, 2014
UJA Federation of New York
Lawyers Division Criminal Law Group
Annual Reception
New York, NY
Copy Attached

June 2014 Peacemakers School Based Violence Reduction Program
Public Service Announcement for Nassau County District Attorney's Office
Brooklyn, NY
Copy Attached (Note: I believe this PSA aired in June 2014, but was filmed
in June 2012.)

May 5-7, 2014
U.S. Embassy Organized Crime Workshop
The Enterprise Theory of Prosecution
Kiffa, Mauritania
Copy Attached

April 4, 2014
Ford Foundation
Strengthening the Relationship Between Law Enforcement and Communities
of Color
New York, NY
Copy Attached

April 3, 2014
Touro Law School
Black Law Students Association Spring Gala
Great River, NY
Copy Attached

March 25, 2014
Manhattan District Attorney's Office
Women's History Month
New York, NY
Copy Attached

February 6, 2014
Eastern District Association
Charles Rose Award 2014 Winner – Introduction of Nicole Boeckmann
Brooklyn, NY
Copy Attached

January 20, 2014
Martin Luther King, Jr. Center
Celebration Event
Long Beach, NY
Copy Attached
Video available at: <https://www.youtube.com/watch?v=r9HUICl6Eos>

October 10, 2013
Society of Professional Investigators
Person of the Year Award
Eastern District Of New York
New York, NY
Copy Attached

July 19, 2013
National Black Prosecutors Conference
Keynote Speech
Scottsdale, AZ
Copy Attached

June 14, 2013
Investiture of Pamela Chen to the United States District Court for the Eastern
District of New York
Pamela Chen Induction
New York, NY
Copy Attached

May 23, 2013
High School Career Day Event
YMCA Of Greater New York
New York, NY
Copy Attached

May 20, 2013
White Collar Crime Conference
New York City Bar Association
New York, NY
Copy Attached

May 17, 2013
Upper Northeast Regional Compliance & Ethics Conference
New York, NY
Copy and Video Attached

May 16, 2013
Madison-Marine-Homecrest Civic Association Meeting
Brooklyn, NY
Copy and Video Attached

March 5, 2013
African American Heritage Month
U.S. Securities and Exchange Commission
New York, NY
Copy Attached

February 6, 2013
Eastern District Association Dinner
Charles Rose Award – Presentation to Carolyn Pokorny
New York, NY
Copy Attached

January 16, 2013
Milbank Woman's Initiative Speaker Series
New York, NY
Copy Attached

November 21, 2012
Remarks in Response to the Award of the Emory Buckner
Medal for "Outstanding Public Service"
Federal Bar Council Annual Thanksgiving Luncheon
New York, NY
Copy Attached

October 27, 2012
Amistad Long Island Black Bar Association
Barristers Ball
Keynote Speech
Central Islip, NY
Copy Attached

October 16, 2012
Crime Commission Breakfast
National Security: Emerging Threats and Trends
New York, NY
Copy Attached

October 3, 2012
New York City Construction Integrity Institute
Luncheon Speech
New York, NY
Copy Attached

June 25, 2012
Bedford Academy Graduation
High School Graduation Speech
1119 Bedford Avenue
Brooklyn, NY 11216
Copy Unavailable

June 7, 2012
Amnesty International Breakfast
Introduction of Luis Moreno Ocampo
New York, NY
Copy Attached

May 11, 2012
Investiture of Margo Brodie to the District Court for the Eastern District of
New York
Introduction of Margo Brodie
Brooklyn, NY
Copy Attached

March 26, 2012
Department of Justice Association of Black Attorneys
Women's History Month Program
Washington, DC
Copy Attached

February 29, 2012
District Of New Jersey
Black History Month Celebration
Newark, NJ
Copy Attached

February 28, 2012
Eastern District of New York
Black History Month Program
Brooklyn, NY
Copy Attached

February 23, 2012
Metropolitan Detention Center
African American History Month Program
Brooklyn, NY
Copy Attached

February 21, 2012
New York County Lawyers Association
Ida B. Wells Barnett Award
New York, NY
Copy Attached

February 8, 2012
Lloyd Sealy Lecture
John Jay College
New York, NY
Copy Attached

February 2, 2012
Eastern District Association Dinner
New York, NY
Copy Attached

November 7, 2011
Agudath Israel Legislative Breakfast
Keynote Address
New York, NY
Video available at: https://www.youtube.com/watch?v=u2_Gx47pSGI

November 1, 2011
New York University Luncheon
New York, NY
Copy Attached

October 6, 2011
Hispanic Heritage Day
New York, NY
Copy Attached

May 25, 2011
American Academy for Professional Law Enforcement
New York, NY
Copy Attached

May 24, 2011
Federal Law Enforcement Foundation Breakfast
New York, NY
Copy Attached

April 23, 2011
National Organization of Black Law Enforcement Training Conference
New York, NY
Copy Attached

March 21, 2011
Brooklyn Law School, First Year Class, Professors Brodie and Driscoll
New York, NY
Copy Attached

March 8, 2011
Federal Law Enforcement Officers Association Foundation Award
New York, NY
Copy Attached

February 24, 2011
Drug Enforcement Administration
Black History Month Program
New York, NY
Copy Attached

December 6, 2010
Loretta E. Lynch Investiture
Brooklyn, NY
Copy Attached

November 9, 2010
New York Council of Defense Lawyers Luncheon
Yale Club
New York, NY
Copy Attached

November 5, 2010
Brooklyn Law School
Health Care Fraud Summit
Welcoming Remarks
Brooklyn, NY
Copy Attached

October 6, 2010
Association of Black Women Attorneys
Installation of Officers
New York, NY
Copy Attached

May 31, 2010
Respect for Law Alliance
New York, NY
Copy Attached

April 27, 2009
Association of the Bar of the City of New York
A Celebration of South African Freedom Day
New York, NY
Copy Attached

September 2008
Association of the Bar of the City of New York
Farewell Reception for South African Visiting Lawyers
New York, NY
Copy Attached

February 20, 2008
U.S. District Court for the Southern District of New York
Black History Month Program
New York, NY
Copy Attached

January 2008
American League of Lobbyists
Presentation on Foreign Corrupt Practices Act (Co-Presenter)
Washington, DC
Copy of Presentation Attached

April 2007
NAACP Brooklyn Branch
NAACP Leadership Award Acceptance
Brooklyn, NY
Copy Attached

September 18, 2007
Federal Bar Council Inn of Court
Presentation on International Criminal Tribunal for Rwanda (ICTR)
Daniel Patrick Moynihan United States Courthouse
600 Pearl Street
New York, NY 10007
Copy Unavailable

September 2007
Association of the Bar of the City of New York
South African Visiting Lawyers Program
Copy Attached

June 12, 2006
United States District Court for the Eastern District of New York
Courthouse Dedication Ceremony
Brooklyn, NY
Copy Attached

March 6, 2006
Association of the Bar of the City of New York
African Affairs Committee Comments on ICTR
New York, NY
Copy Attached

June 2005
Hogan & Hartson LLP
Distinguished Speaker Series
New York, NY
Copy Attached

June 21, 2003
Presentation to Istanbul, Turkey Bar Association
The American Criminal Justice System and the Role of the Federal
Prosecutor
Istanbul, Turkey
Copy Attached

March 26, 2003
New York University School of Law Prosecution Clinic
New York, NY
Copy Attached

February 28, 2003
Burnett R. Lynch Retirement Luncheon
Street Address Unavailable
Gastonia, NY
Copy Unavailable

October 2002
Minority Bar Association of Western New York
20th Annual Awards Dinner Keynote Speech
Buffalo, NY
Record Attached

September 2002
Robin Kaplan Miller & Ciresi Seminar on White Collar Crime
What the Prosecutor Wants
Minneapolis, MN
Copy Attached

October 19, 2001
Association of the Bar of the City of New York
Work Life Balance in the Legal Profession
New York, NY
Copy Attached (Note: Notes are misdated November 2011.)

July 2001
National Association of Minority Automobile Dealers Conference
Dinner Speaker
Houston, TX
Copy Attached

March 15, 2001
Cardozo Law School Black Law Students Association Program
Cardozo Law School
New York, NY
Copy Attached

February 8, 2001
Nassau County (Long Island) Bar Association
Diversity within the Legal Profession
Mineola, NY
Copy Attached

January 11, 2001
U.S. District Court for the Eastern District of New York
Investiture Speech
Brooklyn, NY
Copy Attached

December 22, 2000
U.S. Secret Service Academy Graduation Exercises Commencement Speech
Training Academy
Prince George's County, MD
Copy Attached

December 8, 2000
U.S. Postal Inspection Service Metro Division Conference
New York, NY
Copy Attached

November 2000
Nassau County Bar Association
Civil Rights Initiatives
Mineola, NY
Copy Attached

June 10, 2000
Association of Black Women Attorneys Luncheon
Keynote Speech
Brooklyn, NY
Copy Attached

May 17, 2000
New York Police Department Executive Leadership Program
New York, NY
Copy Attached

April 2000
Delta Sigma Theta Sorority Xi Tau Chapter Anniversary
Dinner Keynote Speech
Cambridge, MA
Copy Attached

March 2000
U.S. Customs Service Women's History Month Program
New York, NY
Copy Attached

March 2000
NYC Department of Corrections Women's History Month Program
New York, NY
Copy Attached

February 2000
Tribune Society Black History Month Celebration
New York, NY
Copy Attached

December 1999
Latham & Watkins LLP
Associate Luncheon Public Service Speech
885 Third Avenue
New York, NY 10022
Copy Unavailable

March 13, 1994
Zeta Phi Beta Sorority Scholarship Luncheon
Garden City, NY
Copy Attached

June 1992
Long Branch Baptist Church Women's Day Program
Greenville, SC
Copy Attached

October 1984
White Rock Baptist Church, Anniversary Banquet
Keynote Speaker
3400 Fayetteville Road
Durham, NC 27707
Copy Unavailable

Panels

June 12, 2014
Second Circuit Judicial Conference
"Investigating And Prosecuting Terrorism In The Cyber Age"
Saratoga Springs, NY
Copy Attached

May 15, 2014
Perkins Coie
Women & White Collar: Building Your Career and Developing Your Practice
New York, NY
Discussion Outline Attached

April 11, 2014
Harvard Law School
Crimes and Misdemeanors: Contemporary Careers in Criminal Justice
Cambridge, MA
Video available at:
<http://www.law.harvard.edu/alumni/reunions/spring14/spring-reunion-2014-videos.html>

January 10, 2014
Human Trafficking Awareness Month
Fighting Modern Day Slavery
Moderator – Panel Discussion
Brooklyn Historical Society
New York, NY
Copy Attached

September 28, 2011
Eastern District of New York
Welcoming Remarks – Panel on Export Enforcement/Counter Proliferation
New York, NY
Copy Attached

March 2009
KPMG and Hogan & Hartson
Doing Business in India
Hogan & Hartson
875 3rd Avenue
New York, NY 10022
Copy Unavailable

March 2009
New York State Bar Association Panel on Business Development Strategies for Attorneys of Color in Challenging Economic Times
Moderator
New York, NY
Copy Attached

November 13, 2008
Practising Law Institute (PLI)
Securities Regulation
New York, NY
Video Attached

February 2008
American Bar Association Section of Litigation Committee on Corporate
Counsel
Panel on Litigation Management and Legal Fees
6902 East Greenway Parkway
Scottsdale, AZ 83254
Copy Unavailable

November 10, 2007
Practising Law Institute (PLI)
Securities Regulation
Street Address Unavailable
New York, NY
Record Attached

October 2007
Cleveland State University, Cleveland-Marshall School of Law
Criminal Justice Forum
1801 Euclid Avenue
Cleveland, OH 44115
Copy Unavailable

September 2007
Duke University School of Law
The Court of Public Opinion (press issues surrounding the Duke lacrosse
case)
Durham, NC
Copy Attached
Video attached and available at:
<http://law.duke.edu/copo/prosecutors/#video5>

November 2006
Practising Law Institute (PLI)
Securities Regulation
New York, NY
Video Attached

April 2006
United States District Court for the Eastern District of New York
Privilege Issues in Corporate Investigations
225 Cadman Plaza East
Brooklyn, NY 11201
Copy Unavailable

February 17, 2006
American Bar Association Section of Litigation Committee on Corporate
Counsel
Panel on Corporate Litigation
San Diego, CA
Copy Attached

February 2006
Federal Bar Council
Winter Bench and Bar Conference
Should International Law be Considered by U.S. Courts?
Street Address Unavailable
St. Thomas, U.S. Virgin Islands
Copy Unavailable

June 2002
Second Circuit Judicial Conference Panel
Judging Under the Guidelines
Street Address Unavailable
New Paltz, NY
Copy Unavailable

February 7, 2002
St. Johns University School of Law
Prosecuting Terrorism
Queens, NY
Record Attached

October 2001
Vera Institute of Justice
Issues of Consistency in the Federal Death Penalty - Reflections on the Role
of the U.S. Attorney
233 Broadway
New York, NY 10279
Record Attached

February 2001
Federal Bar Council Winter Bench and Bar Conference
Panel on Corporate Investigations
Street Address Unavailable
St. John, U.S. Virgin Islands
Copy Unavailable

November 2000
Cardozo Law School
Cooperating Witnesses
New York, NY
Record Attached

Fall 2000
Harvard Law School Black Alumni Weekend
Criminal Justice System
1563 Massachusetts Avenue
Cambridge, MA 02138
Copy Unavailable

August 2000
Fordham Law School
Fordham Urban Law Journal "Law and Disorder"
New York, NY
Record Attached

Spring 2000
Association of the Bar of the City of New York
Federal Grand Jury Practice
42 West 44th Street
New York, NY 10036
Copy Unavailable

Fall 1999
Harvard Law School Class of 1984 Reunion
Cyber Law and Privacy Issues
1563 Massachusetts Avenue
Cambridge, MA 02138
Copy Unavailable

CLE and Legal Training
May 31, 2012
Practising Law Institute (PLI)
Government Views on Corporate Compliance Programs
Copy Attached

June 2009
Hogan & Hartson LLP
Litigation Junior Associate Training - Witness and Client Interviews
New York, NY
Copy Attached (Note: Used Notes from May 2007 Training.)

May 12, 2007
Hogan & Hartson LLP
Litigation Junior Associate Training -- Witness and Client Interviews
New York, NY
Copy Attached

December 2006
National Institute for Trial Advocacy Workshop
University of Virgin Islands
Albert A. Sheen Campus
Queen Mary Highway, Route 70
St. Croix, U.S. Virgin Islands
Copy Unavailable

May 24, 2005
Hogan & Hartson LLP
CLE Program on FCPA
New York, NY
Copy Attached

March 8, 2005
Met Life
Corporate Internal Investigations
New York, NY
Copy Attached

September 27, 2000
Practising Law Institute (PLI)
Seminar on "Broker/Dealer Regulation and Enforcement"
Luncheon Speech
New York, NY
Copy Attached

On occasion, I also have videotaped remarks to be shown at celebrations to recognize retirees from the Department or to congratulate Departmental employees for honors they may have received.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews given, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

November 10, 2014
CNBC, Crime and Punishment, U.S. v. Liounis
Video Attached

June 25, 2014
ABC News Nightline/Fusion, Inside America's Brothels, Modern Day Slavery
Video Attached

June 15, 2014
ABC News Nightline/Fusion, Pimp City, Chapters 1-5: A Journey Into the Center of the Sex Trade, Modern Day Slavery
Videos Attached

September-October 2013
Compliance & Ethics Professional, In the Spotlight: Loretta Lynch
Copy Attached

June 13, 2013
CNBC, Crime and Punishment: 21 Million Dollar Fraud
Video Attached

May 30, 2013
CNBC, American Greed, U.S. v. Barry
Video Attached

May 10, 2013
CNBC, Crime and Punishment, U.S. v. Finazzo
Copy and Video Attached

May 5, 2013
PBS NewsHour, International ATM Cyber Hackers Hid in Plain Sight
Partial Video Attached; interview available at
<https://www.youtube.com/watch?v=aynZeSZo-bl>

November 5, 2012
Federal News Radio, Federal Drive
Radio Interview about Effects of Hurricane Sandy
Audio Attached

October 20, 2012
CBS News, U.S. v. Nafis
Video Attached

October 2012
Fox 5 News, New York, U.S. v. Nafis
Video Unavailable (Note: Although I recall providing this interview, I am unable to locate a record of it.)

December-January 2008
The Network Journal
Antoine Craigwell, Attorneys at the Top
Copy Attached

November 27, 2007
NBC News 4 New York, John "Junior" Gotti
Video Attached

August 16, 2007
New York Sun
Joseph Goldstein, Several Possible Successors to Mauskopf Emerge
Copy Attached

September 10, 2002
PBS NewsHour, Liberty vs. Security
Transcript Attached

July 18, 2002
New York Daily News
Mike Claffey and John Marzulli, Verdict Stings Ex-Cop:
Schwarz Expected Acquittal in Louima Case
Copy Attached

January 10, 2002
PBS NewsHour, Enron Fallout
Transcript Attached

September 25, 2001
PBS NewsHour, Searching for a Balance
Transcript Attached

August 28, 2001
PBS NewsHour, In The System
Transcript Attached

July 9, 2001
Fox News, Chandra Levy Disappearance
Video Attached

June 21, 2001
Fox News, Chandra Levy Disappearance
Video Attached

June 10, 2001
Fox News, McVeigh Execution
Video Attached

May 30, 2001
New York Post, Christopher Francescani, Louima Case Prosecutor Tapped as
U.S. Attorney
Copy Attached

May 30, 2001
New York Daily News
Mike Claffey, Cop Probe Open as U.S. Attorney Leaves Post
Copy Attached

May 30, 2001
New York Times, Susan Saulny, Louima Case Prosecutor to Fill U.S. Attorney
Post
Copy Attached

May 26, 2001
Newsday
Pete Bowles, Gravano Both Plead: Ex-Underboss, Son Admit Guilt in
Ecstasy Case
Copy Attached

May 25, 2001
Associated Press
Tom Hays, Gravano and Son Plead Guilty in Drug Case
Copy Attached

May 23, 2001
Herald Sun (Melbourne, Australia), Ecstasy King Seized
Copy Attached

May 18, 2001
Fort Worth Star-Telegram
Toni Heinzl, U.S. Officials Say Gigante Runs Genovese Crime Family
from Texas Prison
Copy Attached

May 2001

The Gazette (Montreal, Quebec), Genovese Crime Family Targeted: 45
Arrested in Raids in Three States After Long Probe
Copy Attached

April 26, 2001

New York Times
Alan Feuer, Using an Informer, U.S. Agents Charge 45 in Mafia Crimes
Copy Attached

April 26, 2001

Newsday
Graham Rayman, Mob Takes a Big Hit: NYPD, FBI Bust 45 with Help of
Informant, Secret Tapes
Copy Attached

April 26, 2001

CNN, FBI Arrests 45 Alleged Mob Members
Copy Attached

March 17, 2001

New York Times
Alan Feuer, U.S. Attorney, Told to Leave, Is Uncertain On Future Job
Copy Attached

March 9, 2001

New York Times
Al Baker, U.S. to Investigate Suffolk Officer's Actions
Copy Attached

March 9, 2001

United Press International
Timothy Maloy, Organized Crime Stock Scheme Uncovered
Copy Attached

March 9, 2001

New York Times
Nichole Christian, Officials Say Stock Scheme Raised Money for the Mob
Copy Attached

March 9, 2001

The Globe and Mail (Canada)
Jerry Marken, Mob Charged in Stock Fraud
Copy Attached

March 9, 2001
New York Daily News
Leo Standora, Feds Eying L.I. Cop in Road-Strip Cases
Copy Attached

March 9, 2001
USA Today
Greg Farrell, \$50M 'Pump-and-Dump' Scam Nets 20 Arrests, FBI: 2 Men
Charged Have Mob Connections
Copy Attached

March 9, 2001
New York Daily News
Mike Claffey, 20 Brokers Indicted in New York
Copy Attached

March 8, 2001
CNNfn, Stock Fraud Scheme
03/08/2001
Transcript Attached

February 22, 2001
New York Times
Laura Mansnerus, New York's U.S. Attorneys Suddenly Lack Job Security
Copy Attached

February 16, 2001
New York Daily News
Robert Gearty, 4 Charged in Suffolk Eco-Terrorism Spree
Copy Attached

December 22, 2000
New York Daily News
Mike Claffey, U.S. Atty. in N.Y. Gets 4-Yr. Term
Copy Attached

December 22, 2000
New York Daily News
Robert Gearty, Hempstead Gang Nailed: Indictments Cap Year-Long Probe
Copy Attached

December 22, 2000
Associated Press
10 Men Are Indicted in a War Between Long Island Street Gangs
Copy Attached

November 29, 2000
Newsday
Graham Rayman, Reputed Mobsters Indicted in '88 Slaying
Copy Attached

November 29, 2000
New York Post
Christopher Francescani, Alleged Mob Crew Faces Racketeering Rap in
Brooklyn
Copy Attached

November 17, 2000
New York Daily News
Mike Claffey, Feds Bust 53 in Car Crash Insure Scam
Copy Attached

November 17, 2000
Newsday
Graham Rayman, A Case of Accidents Waiting to Happen/Feds: Car Crashes
Staged for Insurance Fraud
Copy Attached

October 26, 2000
Newsday
Graham Rayman, Cops in Drug Bust/Federal Prosecutors Say They
Transported Cocaine, Heroin
Copy Attached

October 25, 2000
Associated Press
Tom Hays, Detectives Charged in Drug Conspiracy Case
Copy Attached

September 21, 2000
CNNfn, Mobsters on Wall Street
09/21/2000
Transcript Attached

September 1, 2000
Family Practice News
Denise Fulton, Swango Charged With Murders in New York
Copy Attached

July 14, 2000
ABC News, Medicine and Murder? Dr. Michael Swango Charged With
Murder in Deaths of His Patients
Transcript Attached

July 12, 2000
Copley News Service
Tony Cappasso, SIU Grad Accused of Poisoning Patients Indicted
Copy Attached

July 12, 2000
New York Times
Michael Cooper, Former Doctor Charged in Death of 3 Patients
Copy Attached

July 12, 2000
Argus Leader (Sioux Falls, SD)
Jennifer Gerrietts, A Trail of Tragedy
Copy Attached

June 28, 2000
Newsday
Patricia Hurtado, Defiant Stance: Schwarz Denies Guilt But Gets 15 Years in
Attach; 2 Others Get 5 Each
Copy Attached

June 27, 2000
National Public Radio, Sentencing of Officers Involved in the Assault of
Haitian Immigrant Abner Louima
Transcript Attached

June 22, 2000
Newsday
Patricia Hurtado, Guilty of Lying: Another Cop Falls in Louima Case
Copy Attached

June 1, 2000
New York Daily News
Mike Claffey, Brooklyn Man Pleads Guilty to Running Child-Porn Ring
Copy Attached

May 26, 2000
Newsday
Robert Kessler, LI Lawyer Gets Case of Jailed Scientist
Copy Attached

May 9, 2000
Newsday
Mae Cheng, Ex-Ins Supervisor Guilty: Convicted of Taking Bribes to Approve
Asylum Requests
Copy Attached

May 2, 2000
New York Daily News
Robert Gearty, Developers Hit in Lawsuit Apts. Called Not Accessible
Copy Attached

April 14, 2000
New York Daily News
Mike Claffey, 28 Busted in Fedex Pot Shipping Ring
Copy Attached

April 13, 2000
Associated Press
Michael Sniffen, Mexico-Jamaica Drug Ring Broken
Copy Attached

April 13, 2000
Associated Press
Lawrence Knutson, Drug Agents Break up Coast-to-Coast Mexican-Jamaican
Ring
Copy Attached

April 6, 2000
New York Times
William Rashbaum, 18 Held as Members of Gangs That Sold Weapons and
Drugs
Copy Attached

March 29, 2000
New York Voice
Borough Prez. Calls For Release on NYPD Findings
Copy Attached

March 13, 2000
Waste News
Cheryl McMullen, FBI Arrests NYC Mob-Connected Scrap Operator
Copy Attached

March 7, 2000
New York Daily News
Mike Claffey, Officers Found Guilty of Covering up Louima Attack
Copy Attached

March 6, 2000
Agence France Presse
New York Officers Guilty of Conspiring to Obstruct Justice in Louima Case
Copy Attached

March 3, 2000
Austin American-Statesman
Larry Neumeister, Russian, Italian Mobsters United in Stock Scam,
Investigators Say
Copy Attached

March 3, 2000
ABC News, New York City Commissioner Howard Safir Discusses
Uncovering Stock Scam Run by US and Russian Mobsters
Transcript Attached

March 3, 2000
Newsday
Pete Bowles, 19 Charged in Stock Swindle: Feds Say Mob Musvled \$60m
Fraud
Copy Attached

March 2, 2000
CNBC, New York Attorney General Announces Indictments in Money
Laundering and Racketeering Scheme Involving the Mob
Transcript Attached

February 8, 2000
New York Daily News
Bill Farrell, New Courthouse Arising
Copy Attached

December 16, 1999
Associated Press
Tom Hays, GOP Fundraiser Indicted on Influence-Peddling Charges
Copy Attached

December 14, 1999
Associated Press
Tom Hays, Ex-New York Cop Gets 30 years in Prison for Brutal Attack
Copy Attached

September 24, 1999
Bloomberg News, Guilty Pleas in Stock Fraud
Copy Attached

July 21, 1999
New York Times
Christopher Wren, 7 Charged in Drug Scheme Said to Use Hasidic Couriers
Copy Attached

July 20, 1999
Associated Press
Seven Indicted in Ecstasy Smuggling Ring
Copy Attached

June 5, 1999
New York Times
Joseph Fried, Jury in Police Brutality Case Begins Deliberations
Copy Attached

May 31, 1999
News and Observer (Raleigh, NC)
John Sullivan, Prosecutor in Louima Case Recalls Her Durham Roots
Copy Attached

May 26, 1999
The Herald-Sun (Durham, NC)
Geoffrey Graybeal, Police Trial Just Another Case for Prosecutor
Copy Attached

May 22, 1997
New York Daily News
Robert Gearty, 19 Nabbed in L.I. Fraud Crackdown
Copy Attached

August 9, 1996
Newsday
Liam Plevin, U.S. Asks Judge / Go Easy on McNamara / Sentencing Today
for Former Auto Dealer
Copy Attached

October 3, 1995
New York Daily News
Sheila Feeney, Law's Still Easy To (Dead)Beat: Despite Court Orders, Bad
Dads Aren't at Top of the Feds' Most Wanted Lists
Copy Attached

March 16, 1995
Newsday
Liam Plevin, Setback for Aliperti Defense Judge: Jury Can't Hear of Acquittals
Copy Attached

January 29, 1995
Tampa Tribune
Dealer's Plea in Fraud May Be Bargain of His Life
Copy Attached

December 16, 1994
Newsday
Liam Pleven, Mac Selling Cars or Buying Votes? Defense Says He Made Money on the Deals
Copy Attached

December 14, 1994
Newsday
Liam Pleven, Low Key Lynch vs. Loud Defense
Copy Attached

October 12, 1994
Eye on Crime with Tom Schiliro
Interview on Role United States Attorney Office on Long Island
Video Attached

April 17, 1994
Newsday
Liam Pleven, Inside Long Island: The Brookhaven Corruption Case
Copy Attached

June 1993
ABA Journal
John Jenkins, Marked Woman: Heroin Kingpins Have Put Out Contracts on Prosecutor Cathy Palmer's Life. For Her, It's Business as Usual
Copy Attached

December 5, 1990
Newsday
Pete Bowles, 7 Indicted in Chinese Gang Terror
Copy Attached

13. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Office of the United States Attorney for the Eastern District of New York
1990 – 1999
Positions: Chief Assistant U.S. Attorney (“Chief Assistant” and “First Assistant” are used interchangeably within the Department); Deputy Chief and Chief, Long Island Division; Chief of Intake & Arraignments and Deputy Chief, General Crimes; Assistant U.S. Attorney

United States Attorney for the Eastern District of New York 1999 – 2001
(appointed 07/18/1999; sworn in 12/28/2000)
Appointed by President William J. Clinton

New York City Charter Revision Commission 2002
Appointed by Mayor Michael Bloomberg

New York State Commission on Public Integrity 2007 – 2010
Acting Chair February – May 2009
Appointed by Governor Eliot Spitzer

United States Attorney for the Eastern District of New York 2010 – present
(appointed 04/23/2010; sworn in 05/03/2010)
Appointed by President Barack H. Obama

I have never been a candidate for public office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I am a registered Democrat for voting purposes.

I was a volunteer campaign worker for the Chris Owens for City Council (NYC) election campaign during the summer of 1989. I did general volunteer work, including reviewing petitions and election filings. The campaign concluded in the fall of 1989.

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a judicial law clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

09/1984 – 02/1990
Cahill Gordon & Reindel
80 Pine Street
New York, NY 10005
Litigation Associate

09/2000 – 12/2000
St. John's University School of Law
8000 Utopia Parkway
Jamaica, NY 11439
Adjunct Professor

03/1990 – 05/2001
Office of the United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201
United States Attorney 1999 – 2001
(appointed 07/18/1999; sworn in 12/28/2000)

Other Positions: Chief Assistant U.S. Attorney (“Chief Assistant” and “First Assistant” are used interchangeably); Deputy Chief and Chief, Long Island Division; Chief, Intake & Arraignments & Deputy Chief, General Crimes; Assistant U.S. Attorney

07/2005 – 07/2007
United Nations International Criminal Tribunal for Rwanda
Arusha International Conference Centre
P.O. Box 6016
Arusha, Tanzania
Counsel to the Prosecutor (pro bono appointment while with Hogan & Hartson LLP)

01/2002 – 05/2010
Hogan & Hartson LLP
875 Third Avenue
New York, NY 10022
Partner

05/2010 – present
(appointed 04/23/2010; sworn in 05/03/2010)
Office of the United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201
United States Attorney

Please see Question 6 for non-profit and other board service.

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

In my current practice as U.S. Attorney (2010 – present), I manage all aspects of the office, including the legal practice (both civil and criminal) and administrative matters. I maintain a relationship with the bench and the defense bar. I also interact with Department officials on policy issues.

My practice at Hogan & Hartson (2002 – 2010) was primarily white collar criminal defense and counseling. I counseled and spoke on issues involving the Foreign Corrupt Practices Act (FCPA). I represented individuals and entities before Department, the SEC, and other investigative bodies, conducted internal investigations and worked on civil matters involving antitrust and employment issues.

In my first tenure at the U.S. Attorney's Office (1990 – 2001), I handled narcotics, money laundering, violent crime, public corruption and civil rights cases. I also served as a supervisor within the office and handled community affairs, policy and management issues. As U.S. Attorney during this tenure, I managed all aspects of the office, including the legal practice (both civil and criminal) and administrative matters. I maintained a relationship with the bench and the defense bar, and interacted with Department officials on policy issues.

While an associate at Cahill Gordon (1984 – 1990), I researched and wrote memoranda of law, took and defended depositions, and engaged in discovery practice. It was a commercial civil practice.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My only current client is the United States. My current responsibilities are supervisory and managerial. When I previously litigated cases in the office, my practice was exclusively criminal.

My client base at Hogan & Hartson contained individuals as well as corporate entities. The business entities were varied and included pharmaceutical companies, a communications entity, automotive companies, airlines, accounting firms, and defense contracting firms.

The clients of Cahill Gordon were primarily business entities, ranging from securities firms to a television network. My practice was general and varied within the litigation department.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As U.S. Attorney (both tenures), I have not litigated directly, although all pleadings are in my name. My practice has been managerial and supervisory.

At Hogan & Hartson, my practice was primarily litigation, and included internal investigations and subject matter counseling. I appeared in court occasionally.

In my prior positions in the Office of the United States Attorney for the Eastern District of New York, when I litigated matters, my practice was 100% criminal.

At Cahill Gordon, my practice was exclusively litigation. I appeared in court only occasionally.

- i. Indicate the percentage of your practice in:
1. federal courts;
 2. state courts of record;
 3. other courts;
 4. administrative agencies

During both my tenures in the United States Attorney's Office, my practice has been 100% in federal court.

At Hogan & Hartson, my practice was 95% in federal court and 5% before other administrative agencies.

At Cahill Gordon, my practice was 100% in state court.

- ii. Indicate the percentage of your practice in:
1. civil proceedings;
 2. criminal proceedings.

As United States Attorney, my current responsibilities are divided approximately evenly between the civil (40%) and criminal (40%) practice of the office with the remainder of my time (20%) focused on the administrative functions of the office. When I litigated matters in the office, my practice was 100% criminal.

My practice at Hogan & Hartson was 95% criminal and 5% civil.

My practice at Cahill Gordon was 100% civil.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 13 cases to verdict, including one at Cahill Gordon and 12 at the U.S. Attorney's Office. At Cahill Gordon, I was associate counsel. At the U.S. Attorney's Office, I second chaired my first trial, and in other trials I was lead counsel or part of the trial team.

In addition, while at Hogan, I served as Ethics Counsel to the New York City Council Committee on Standards and Ethics and served as lead counsel in the Committee's administrative hearing charging a New York City Councilman with sexual harassment.

- i. What percentage of these trials were:
1. Jury – 100% (other than the administrative hearing noted above)
 2. Non-jury – 0%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Hearings and Trials

1. In the Matter of Alan Jennings 04 CSE 001

This matter involved an investigation and hearing before the New York City Council Committee on Standards and Ethics on allegations of sexual harassment, improper termination and inappropriate conduct against then-Councilman Jennings involving two

former staffers and two City Council employees. Two female former staffers of the Councilman testified that he both made inappropriate comments to them and touched them inappropriately, as well as directed them to perform menial housekeeping tasks at his home. To one of the staffers, a grandmother, the Councilman presented a travel souvenir depicting a phallic symbol. When the second staffer wrote to complain of her treatment by him, the Councilman terminated her employment. The hearing ran from October 2004 through February 2005 with numerous breaks in testimony. I served as Counsel to the Ethics Committee and presented the case against Councilman Jennings. I prepared the case, handled numerous witnesses and exhibits, and delivered the opening and closing arguments. The Committee found that Councilman Jennings had engaged in sexual harassment and recommended he be censured by the full New York City Council, which recommendation was adopted.

Committee: Councilman Joel Rivera
250 Broadway 18th Floor
New York, NY 10007
212-788-6966

Councilmember Madeline Provenzano
(retired)

Councilmember Peter Vallone, Jr.
Currently: Special Assistant to the Commissioner of the Department of
Corrections and Community Supervision
22-45 31st Street
Long Island City, NY 11105
518-473-9400

Councilmember Melinda Katz
Currently: Queens Borough President
120-55 Queens Boulevard
Kew Gardens, NY 11424
718-286-2870

Councilmember David I. Weprin
Currently: New York State Assemblyman
185-06 Union Turnpike
Fresh Meadows, NY 11368
212-788-6984

Councilmember Diana Reyna
250 Broadway 17th Floor
New York, NY 10007
212-788-7095

Councilmember Phillip Reed
(deceased)

Councilmember William Perkins
 Currently: New York State Senator
 163 West 125th Street
 Harlem State Office Building, Suite 912
 New York, NY 10027
 212-222-7315

Councilmember Andrew Lanza
 Currently: New York State Senator
 3845 Richmond Avenue Suite 2A
 Staten Island, NY 10312
 718-984-4073

Co-counsel: Anne Kelly
 Assistant District Attorney
 Office of the District Attorney
 18th Judicial District
 Robert A. Christenson Justice Center
 400 Justice Way
 Castle Rock, CO 80109
 303-814-7100

Defense counsel: Robert Ellis
 (deceased)

2. U.S. v. Volpe, et al.
98 CR 196 (EHN)

I worked on the criminal civil rights investigation and ultimately, the five-week trial in 1999 of four New York City police officers and one police sergeant on charges of conspiracy to violate civil rights, violation of civil rights, obstruction of justice, accessory after the fact and false statements. The lead defendant, Justin Volpe, was charged with the sexual assault, with an object, upon Haitian immigrant Abner Louima. The remaining defendants were involved in assisting or covering up the assault. Louima was arrested outside a Brooklyn nightclub after officers were called to the scene. During the disturbance, Volpe was struck by a civilian, whom officers incorrectly believed was Abner Louima. Upon his arrest, Louima was beaten in the police car on the way to the precinct, and ultimately taken to the police precinct where Volpe and Officer Schwarz took him into the bathroom and Schwarz subdued Louima as Volpe sodomized him with a broken broomstick. Louima needed several surgeries to repair the damage. The lead defendant Volpe pled guilty late in the trial; Schwarz was convicted after trial of sexual assault upon the victim; and the remaining three officers were acquitted. As part of the prosecution trial team, I worked on all aspects of the case, including the handling of numerous witnesses and exhibits, and delivered the rebuttal summation.

Judge: Honorable Eugene H. Nickerson (deceased)
 Formerly United States District Judge
 Eastern District of New York

Co-counsel:	<p>Alan M. Vinegrad Covington & Burling 620 Eighth Avenue New York, NY 10018 212-841-1022</p> <p>Kenneth P. Thompson Kings County District Attorney 350 Jay Street Brooklyn, NY 11201 718-250-2000</p>	
Defense counsel:	<p>Marvyn M. Kornberg 125-10 Queens Boulevard Kew Gardens, NY 11415 718-261-4400</p> <p>Stuart London Worth, Longworth & London LLP 111 John Street Suite 640 New York, NY 10038 212-964-8038</p> <p>Stephen C. Worth Worth, Longworth & London LLP 111 John Street Suite 640 New York, NY 10038 212-964-8038</p> <p>Joseph Tacopina Law Offices of Tacopina 275 Madison Avenue 35th Floor New York, NY 10016 212-227-8877</p> <p>Russell Gioiella Litman, Asche & Gioiella 45 Broadway 30th Floor New York, NY 10006 212-908-4500</p> <p>John D. Patten Cerrone & Geoghan 30 Vesey Street PH Suite New York, NY 10007 212-962-1295</p>	<p>counsel for defendant Volpe</p> <p>counsel for defendant Bruder</p> <p>counsel for defendant Schwarz</p> <p>counsel for defendant Wiese</p> <p>counsel for defendant Wiese</p> <p>counsel for defendant Bellomo</p>

**3. U.S. v Aliperti
94 CR 259 (DRH)**

This matter involved the February 1996 re-trial of the defendant, a former member of Planning Board of Town of Brookhaven, on charges of extortion conspiracy, extortion, and perjury arising out of his acceptance of money and favors from Long Island real estate developer and auto dealer John McNamara. As the lead prosecutor in case, I handled multiple aspects of trial preparation and trial, including examination of witnesses and presentation of evidence. I delivered the opening and rebuttal summation. The defendant was acquitted of substantive extortion and the jury could not reach a verdict on the extortion conspiracy and perjury charges. The defendant ultimately pled guilty to charges of bank fraud and income tax evasion.

Judge: Honorable Denis R. Hurley
United States District Judge
Eastern District of New York
United States Courthouse
100 Federal Plaza
Central Islip, NY 11722
631-712-5650

Co-counsel: Honorable Edgardo Ramos
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007
212-805-0294

Defense Counsel: Joel Winograd counsel for Aliperti
Winograd & Winograd
450 Seventh Avenue
New York, NY 10123
212-268-6900

**4. U.S. v. Aliperti
94 CR 259 (DRH)**

This case was the initial separate trial, in March of 1995, of defendant Aliperti on charges of extortion conspiracy, extortion and perjury arising out of his acceptance of money and favors from Long Island real estate developer and auto dealer John McNamara. Aliperti's case had been severed mid-trial in the initial trial of three defendants. As the lead prosecutor in the case, I handled multiple aspects of trial preparation and trial. The jury ultimately could not reach a verdict, and a mistrial was declared.

Judge: Honorable Denis R. Hurley
(see above)

Co-counsel: Honorable Edgardo Ramos
(see above)

Margaret Giordano Friedberg
 Office of the U.S. Attorney for the Eastern District of New York
 271 Cadman Plaza East
 Brooklyn, NY 11201
 718-254-7000

Defense counsel: Michael Handwerker 280 Madison Avenue, Suite 1202 New York, NY 10016 212-679-1330	counsel for defendant Chung
Susan Kellman 25 Eighth Avenue Brooklyn, NY 11217 718-783-8200	counsel for defendant Tran
Lawrence Schoenbach 111 Broadway New York, NY 10006 212-346-2400	counsel for defendant Chan
Gerald E. Bodell 36 W. 44 th Street New York, NY 10036 212-398-3778	counsel for defendant Ngo
Michael Padden Federal Defenders Services One Pierrepoint Plaza 16th Floor Brooklyn, NY 11201 718-330-1200	counsel for defendant Wang
Alan Drezin 26 Court Street Brooklyn, NY 11242 718-624-5553	counsel for defendant Kwok
Bruce McIntyre (deceased)	counsel for defendant Wong
Charles Lavine NY State Representative 70 Glen Street Suite 100 Glen Cove, NY 11542 516-676-0050	counsel for defendant Cheng

Joel Cohen
 128 Mott Street Suite 706
 New York, NY 10013
 212-571-8899

counsel for defendant
 Ng

**8. U.S. v Farace
 90 CR 387 (RJD)**

I was the lead prosecutor in this 1990 trial, wherein the defendant was convicted of narcotics conspiracy. The defendant Michael Farace lured a family friend and small time drug dealer to his neighborhood with a request to purchase cocaine. When the other dealer arrived, the defendant and his brother and cousin beat and robbed him of the drugs and his cash. The victim ultimately became an informant for the DEA. I handled all phases of the trial.

Judge: Honorable Raymond J. Dearie
 United States District Judge
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, NY 11201
 718-613-2430

Defense Counsel: Peter Kircheimer
 Federal Defenders Services
 One Pierrepont Plaza 16th Floor
 Brooklyn, NY 11201

counsel for Farace

**9. U.S. v Mincieli, et al
 90 CR 242 (RR)**

I was the lead prosecutor in this five-week trial in 1990 of five defendants charged with conspiracy to purchase narcotics. The defendants, neighbors and relatives in their Staten Island community, decided to supplement their income by selling cocaine. They approached a bodybuilder and former drug colleague to obtain multiple kilos of cocaine for sale. The oldest defendant, in his sixties at the time, operated a bread delivery route on Staten Island, and planned to sell cocaine along his delivery route. Unbeknownst to the defendants, their former drug colleague had become an informant for the DEA, and agents were able to arrange a "reverse buy," wherein fake kilos of cocaine were delivered to the defendants. One of the defendants sent his wife with the money for the drugs, money that amounted to approximately their entire household income for the year. Three of the defendants, including the elderly bakery driver, were convicted; two were acquitted.

Judge: Honorable Reena Raggi
 (see above)

Co-counsel: Ross Pearlson
 Sills Cummis Zuckerman Radin Tischman Epstein & Gross
 One Riverfront Plaza
 Newark, NJ 07102
 973-643-7000

Defense Counsel: Gerald J. DiChiara 3 Park Avenue, Suite 1501 New York, NY 10016 212-679-1958	counsel for defendant J. Mincieli
Gino Josh Singer 299 Broadway New York, NY 10007 212-227-6655	counsel for defendant J. Mincieli
Joseph Benfante 225 Broadway New York, NY 10007 212-227-4700	counsel for defendant Spallina
Albert Brackley 233 Broadway, Rm 801 New York, NY 10279 212-625-5884	counsel for defendant Zinnante
James Moriarty (unable to locate current information)	counsel for defendant F. Mincieli
Joseph Fallek, Sr. (retired)	counsel for defendant DiGiovanni

**10. U.S. v. McNamara
92 CR 606 (ERK)**

John McNamara was a real estate developer and car dealer in Suffolk County, New York, who was discovered to have defrauded the finance company of his auto dealership of over \$6 billion dollars. The fraud was simple, but lasted several years. McNamara created false documentation providing fictitious Vehicle Identification Numbers to his finance company GMAC, purportedly to obtain financing for customized vans he was purchasing for sale overseas. These vehicles were nonexistent, yet GMAC advanced billions of dollars of financing to McNamara before the fraud was discovered. A GMAC auditor ultimately noticed that McNamara was requesting financing and claiming overseas sales on a monthly basis of more customized vans than had been produced in a calendar year, a physical impossibility. It has been reported that McNamara's fraud was the inspiration for a similar scheme depicted in the Coen brothers' 1996 film "Fargo." In 1992, McNamara pled guilty to this large scale fraud and cooperated in the prosecutions of local politicians he had bribed to ensure favorable treatment of his real estate projects, many of which were financed with the proceeds of the fraud. I was the lead prosecutor in the political corruption investigations (see nos. 3-5 above) in which McNamara was the main cooperating witness. I spent significant time debriefing and preparing him to testify. I also handled his sentencing, which generated several contested Sentencing Guidelines issues. In 1996, McNamara received a sentence of five years and was ordered to pay restitution of over \$400 million.

3. *U.S. v. Espada*. 10 CR 985 (FB). The lead defendant, Pedro Espada Jr., was a former New York State Senate Majority Leader who also ran a federally-funded healthcare clinic in a poor neighborhood of the Bronx, New York. Rather than use the over \$1 million in federal funds he received to run the clinic and buy medicine, syringes, and equipment, Espada lived an extravagant lifestyle and purchased luxury cars, expensive vacations and meals, spa treatments, and other luxuries for himself and his family. Espada was convicted in 2012 for theft of federal funds from the clinic and for lying on his 2005 personal tax return. In 2013, Espada was sentenced to five years imprisonment and ordered to pay restitution.
4. *U.S. v. Cosmo*. 09 CR 255 (DRH). In 2010, the defendant Nicholas Cosmo pled guilty to mail and wire fraud charges stemming from his Ponzi scheme in which he defrauded approximately 3,000 investors out of over \$195 million. Cosmo ran two companies that purported to invest in commercial loans, but in reality were used to fleece their investors. In 2011, Cosmo was sentenced to 25 years imprisonment.

International Criminal Tribunal for Rwanda

One of my most significant and rewarding legal activities was my work with the Tribunal. From 2001 – 2005, I was part of a group of New York lawyers who taught a NITA-based trial advocacy workshop at the Tribunal for the Office of the Prosecutor. In the summer of 2005, the Chief of Prosecutions and the Prosecutor asked me to conduct an investigation into allegations of witness tampering and obstruction of justice at the Tribunal. Witnesses had recanted their testimony during the appellate process and were indicating that Tribunal staff may have been involved in earlier coercion of testimony, hence the need for outside counsel. I spent much of the summer of 2005 in Tanzania, where the Tribunal was located, and Rwanda, where most of the victims still reside. I interviewed numerous genocide survivors. Based on this work, I presented recommendations to the Prosecutor. One of the recanting witnesses was ultimately charged with perjury before the Tribunal. I was planning to try the case against him when he pled guilty.

Internal Investigations

I conducted internal investigations for Hogan & Hartson clients that have resulted in resolution of matters and changes in internal policies.

I conducted an internal investigation for a defense contracting client into FCPA issues in African operations. I coordinated witness interviews both in the U.S. and overseas, as well as overseas document production. I was deeply involved in negotiations (concluded by another firm) with government regulators.

I have conducted internal investigations for a pharmaceutical company client into issues of earnings manipulation as well as promotional practices.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and

describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

October 2012, International Criminal Court (ICC). Taught NITA-based trial advocacy workshop to prosecution trial team at ICC. Focused on case development and witness examinations. Copy Unavailable.

June 2009, Hogan & Hartson. Taught Litigation Junior Associate Training on Witness and Client Interviews. Copy Attached (notes also utilized in May 2007).

2006 – 2008, Hogan & Hartson. Conducted CLE and client presentations on Foreign Corrupt Practices Act (FCPA). Copy Attached (utilized outline provided numerous times).

May 2005, Hogan & Hartson. Taught CLE program on FCPA. Copy Attached.

2001 – 2005, International Criminal Tribunal for Rwanda (ICTR). Taught NITA-based trial advocacy program to prosecutors at ICTR once a year from 2001 – 2005. Copy Attached (utilized outline provided, revised annually, for the program).

Fall 2000, Adjunct Professor St. Johns University School of Law. Taught NITA-based trial advocacy course. Copy Attached.

October 2000, International Law Enforcement Academy (ILEA), Budapest Hungary. Taught course on U.S. Federal law enforcement principles along with two FBI agents. I no longer have the materials from this course.

1992 – 1998, Department of Justice National Advocacy Center. Taught numerous criminal trial advocacy courses through the National Advocacy Center. I no longer have the materials from these courses.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None, except that as a U.S. Government employee, I participate in the Thrift Savings Plan.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

None.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

I earn a salary as a federal employee. For other information, see my SF-278 as provided by the Office of Government Ethics.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I will consult with ethics officials in the Department of Justice.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Since returning to government in 2010, I have devoted a significant portion of my administrative time to expanding the U.S. Attorney's Office's (EDNY) community outreach efforts. I have consolidated outreach efforts into a Community Outreach Committee, which meets with me once a month to discuss our ongoing efforts to work with schools and community groups. We seek to provide role models to students who would not otherwise be exposed to the law and promote understanding of the work of the office. We also participate in a re-entry program based in Brownsville, New York. In 2013, I instituted a requirement that every attorney participate in one community outreach event a year. Most participate in several. The U.S. Attorney's Office (EDNY) is also supportive of the diversion and alternatives to incarceration programs of the United States District Court for the Eastern District of New York.

Prior to rejoining the office, I devoted significant pro bono time to both teaching and conducting an investigation at the ICTR. While my firm required each attorney complete at least 20 annual hours of pro bono work per year, for my Tribunal investigative work I provided over 400 hours of pro bono work, with the firm's acquiescence and support.

In addition, in 2009, I provided approximately 20 hours of pro bono representation to a New York City organization devoted to assisting LGBT youth.

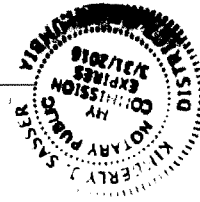
AFFIDAVIT

I, Loretta E. Lynch, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12/01/2014
(DATE)

Loretta E. Lynch
(NAME)

Kimberly J. Sasser
(NOTARY)



PREPARED STATEMENT OF MS. SHARYL ATKISSON

I've been a reporter for 30 years at CBS News, PBS, CNN and in local news. My producers and I have probed countless political, corporate, charitable and financial stories ranging from Iraq contract waste and fraud under Bush to green energy waste under Obama to consumer stories relating to the drug industry.

Some of these reports have been recognized for excellence in journalism—most recently, investigative Emmy nominations and awards for reporting on TARP, Benghazi, green energy spending, Fast and Furious and a group of stories including an undercover investigation into Republican fundraising.

But the job of getting at the truth has never been more difficult.

Facets of federal government have isolated themselves from the public they serve. They covet and withhold public information that we, as citizens, own. They bully and threaten access of journalists who do their jobs, news organizations that publish stories they don't like and whistleblowers who dare to tell the truth.

When I reported on factual contradictions in the administration's accounts regarding Fast and Furious, pushback included a frenzied campaign with White House officials trying to chill the reporting by calling and emailing my superiors and colleagues, and using surrogate bloggers to advance false claims. One White House official got so mad, he angrily cussed me out.

The Justice Department used its authority over building security to handpick reporters allowed to attend a Fast and Furious briefing, refusing to clear me into the public Justice Department building.

Advocates had to file a lawsuit to obtain public information about Fast and Furious improperly withheld under executive privilege. Documents recently released show emails in which taxpayer paid White House and Justice Department press officials complained that I was "out of control," and vowed to call my bosses to try to stop my reporting.

Let me emphasize that my reporting was factually indisputable. Government officials weren't angry because I was doing my job poorly. They were panicked because I was doing my job well.

Many journalists have provided their own accounts.

The White House made good on its threat to punish C-SPAN after C-SPAN dared to defy a White House demand to delay airing a potentially embarrassing interview with the President.

Fifty news organizations, including CBS and the *Washington Post* wrote the White House objecting to unprecedented restrictions on the press that raise constitutional concerns.

A New York Times photographer likened White House practices to the Soviet news agency Tass.

Former *Washington Post* executive editor Len Downie called the Obama War on Leaks “by far the most aggressive” he’s seen since Nixon.

David Sanger of the *New York Times* called this “the most closed, control freak administration” he’s ever covered.

New York Times public editor Margaret Sullivan said it’s “the administration of unprecedented secrecy and unprecedented attacks on a free press.”

ABC News correspondent Ann Compton called Obama “the least transparent of the seven presidents” she’s covered.

Months before we knew the Justice Department had secretly seized AP phone records and surveilled FOX News’ James Rosen, before Director of National Intelligence James Clapper incorrectly testified under oath that Americans weren’t subject to mass data collection... I was tipped off that the government was likely secretly monitoring me due to my reporting.

Three forensics exams confirmed intrusive, long-term remote surveillance. That included keystroke monitoring, password capture, use of Skype to listen into audio and exfiltrate files, and more.

Getting to the bottom of it hasn’t been easy. It’s unclear what, if anything, the FBI has done to investigate.

The Justice Department has refused to answer simple, direct, written Congressional questions about its knowledge of the case. It has stonewalled my Freedom of Information requests... first claiming it had no documents, then eventually identifying 2,500 but never providing them.

In 2013, Reporters Without Borders downgraded America’s standing in the global free press rankings, rating the Obama administration as worse than Bush’s.

It matters not, that when caught, the government promises to dial back or that James Rosen gets an apology.

The message has already been received: if you cross the administration with perfectly accurate reporting that they don’t like: you will be attacked and punished. You and your sources may be subjected to the kind of surveillance devised for enemies of the state.

For much of history, the United States has held itself out as a model of freedom, democracy, and open, accountable government. Freedoms of expression and association are protected by the Constitution.

Today, those freedoms are under assault due to government policies of secrecy, leak prevention, and officials' contact with the media, combined with large-scale surveillance programs.

The nominee, if confirmed, should chart a new path and reject the damaging policies and practices that have been used by others in the past.

If we aren't brave enough to confront these concerns, it could do serious, long-term damage to a supposedly free press.

**Statement of David B. Barlow
Partner, Sidley Austin LLP**

Before the Committee on the Judiciary of the United States Senate

**Hearing on the Nomination of the Honorable Loretta E. Lynch
to Serve as Attorney General of the United States**

Chairman Grassley, Ranking Member Leahy, Members of the Judiciary Committee, it is my privilege to appear before you today in support of the nomination of my former colleague, United States Attorney Loretta Lynch, to serve as Attorney General of the United States.

I would be remiss if I did not first thank this Committee for the strong support I received in 2011 when my own nomination to serve as United States Attorney was before you. It was a tremendous honor to serve as U.S. Attorney. I always will be grateful for the trust that you reposed in me when you supported my nomination.

It is now my privilege to recommend Ms. Lynch to you. You already have heard and read much about her storied 30-year legal career. So instead of elaborating on her many credentials, I want to take just a few minutes to share a couple of personal observations about my former colleague.

I first met Loretta at a conference of United States Attorneys several months after I was sworn in. What I remember most vividly was the way she handled a portion of the program where the U.S. Attorneys were asking questions of the leadership of the Executive Office of United States Attorneys. Loretta moderated the session. Some of the discussion surrounding budgets, resource allocation, hiring authority, and the like became understandably intense as my colleagues and I argued our various views and articulated the many needs our districts had during lean budgetary times.

Loretta was calm and unruffled. She asked hard questions, but did so in a dignified and respectful way. Where strong feelings created the risk of bringing more heat than light to the exchange, Loretta brought only light. She was clearly tough, but also fair and gracious.

That initial impression of Loretta was confirmed and deepened as I served with her on the Attorney General's Advisory Committee (the "AGAC"). As you know, the AGAC is a committee of roughly a dozen or so United States Attorneys who serve as a voice of their colleagues to the Department and provide counsel to Department leadership on various management, policy, and operational issues. Loretta was the chair of the AGAC during the time that I served as a member of it.

You already know that United States Attorneys are not a timid group. All are accustomed to being in charge. All are used to expressing their views. And all are, at least in part, the products of different backgrounds, experiences, and places. If you put twelve or so

United States Attorneys together in a room, as the AGAC does, you will get a wide variety of ideas and perspectives, often strongly held.

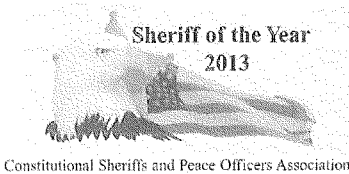
It takes someone special to lead that group. For the AGAC to work well, that someone needs to be smart, insightful, organized, articulate, inclusive, and experienced. Loretta was and is all these things and more. She always was well-prepared. She made sure that all points of view were considered. She listened far more than she talked. She facilitated consensus whenever possible and made space for dissent when opinions could not be reconciled. And by her example and her conduct, she elevated the discourse and refined the exchange of ideas. Through these experiences, my initial impressions of Loretta Lynch were confirmed: she is tough, fair, gracious, smart, and independent.

In conclusion, during my time as United States Attorney, I had the privilege of serving with a truly outstanding group of U.S. Attorneys throughout the country. I learned much from them and was inspired by their service and commitment. Of all of these dedicated and talented public servants, the Honorable Loretta Lynch truly stood out. If confirmed by the Senate, I believe she will make an excellent Attorney General of the United States.



David A. Clarke Jr.
Sheriff

County of Milwaukee
Office of the Sheriff



January 29, 2015

Remarks by Sheriff David A. Clarke Jr., Milwaukee County, Wisconsin to the Honorable Members of the United States Senate Committee on the Judiciary, Washington, D.C.:

Good morning, Chairman Grassley and members of the Senate Judiciary Committee.

I am David A. Clarke Jr., Sheriff of Milwaukee County, Wisconsin, and I am honored to address you today about a frequent news topic: American policing at the local level.

These hearings are focusing on the confirmation of possibly the next Attorney General of the United States, Ms. Loretta Lynch. I wish her well.

I want to spend some time critiquing outgoing Attorney General Eric Holder's tenure at the United States Department of Justice, and use that as the framework for a way forward.

I have met Eric Holder in smaller settings, enough to get a feel for him as a person, and I found him to be a gentleman, polite, very capable and competent. However, I have been shocked after listening to him over time. He has left me, quite frankly, with a different view of the United States Department of Justice, and it isn't very flattering.

The mission statement of the USDOJ says...*To enforce the law and defend the interests of the United States according to the law...*let me repeat that...*according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; AND to ensure impartial administration of justice for ALL Americans.*

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In my 37 years in law enforcement, I viewed the US Department of Justice as an ally in the pursuit of justice. Local law enforcement has always been on the front lines in preventing and controlling crime, and seeking just punishment for those guilty of unlawful behavior, as the mission statement of the DOJ indicates.

What I have witnessed from the Department of Justice under the leadership of Attorney General Eric Holder, has been almost hostility toward local law enforcement. I have seen this in both public statements made about the profession, and in some of the policy decisions which treat police officers as adversaries, instead of allies, in the pursuit of justice. Partnering with local law enforcement agencies AND ensuring the fair treatment of all Americans in the pursuit of justice are not mutually exclusive. We CAN have both at the same time.

What we all witnessed in Ferguson, Missouri back in August, was a tragedy... an unfortunate incident for Officer Darren Wilson AND Citizen Michael Brown. What followed, however, compounded that tragic situation, as people from across the United States converged on Ferguson to exploit the situation for self-serving purposes. Suffice it to say that America did NOT witness its finest hours in the days, weeks and months following the Ferguson, Missouri police-related use of force incident.

What was called for at the moment the USDOJ inserted itself early into the incident, was an appeal to reasonableness, responsible rhetoric and cautioning against a rush to judgment. Instead, some very powerful people made statements that only heightened rising tensions. Inflammatory language about racism, racist cops and racial profiling by police was used in public statements by Attorney General Eric Holder, as he shared his personal anecdotal accounts of being racially profiled by police in the past.

Unfortunately, race is, has been, and always will be an explosive issue in America. What is not needed in volatile situations, is to have people in high profile positions pour fuel on an already smoldering fire.

The incendiary rhetoric used by Eric Holder created a pathway for the false narrative that then became the rallying cry for cop haters across America, and sparked unjustified hatred toward America's law enforcement agencies and officers.

Without a shred of evidence, a broad brush has been used to unfairly malign the reputation of the profession of policing in the United States. The accusation has been made that our communities' finest systematically engage in the practice of targeting young black men because of the color of their skin. That claim is patently false, and I reject out of hand the mere suggestion of it. If I am wrong, then show me the evidence.

Officers at the local level put on their uniforms and go out every day to make their communities better and safer places to live. Without them, our communities would

collapse into utter chaos. Police need to be confident that the US Department of Justice has their backs, as they fairly and evenly enforce society's rules. The world that officers operate in is complex, dynamic, uncertain and one where, unfortunately, things can and do go wrong. When that happens, the American law enforcement officer needs to know that after a thorough and transparent investigation, the facts and evidence of a particular case will be applied to the rule of law standard for a decision about their actions. After putting their lives on the line, they do not deserve a standard of false narratives, preconceptions, misconceptions, emotional rhetoric or racial demagoguery from a ranting mob.

Author and scholar Thomas Sowell, in a thought-provoking piece on the rule of law said: *If people who are told that they are under arrest, and who refuse to come with the police, cannot be forcibly taken into custody, then we do NOT have the rule of law, when the law itself is downgraded to suggestions that no one has the power to enforce.*

So where do we go from here? How do we get beyond the damaged relationship between the US Department of Justice and local law enforcement, so we can move forward and focus our efforts on protecting American communities and ensuring justice?

My suggestion for the next US Attorney General of the United States is to articulate clearly, a renewed commitment to rebuilding trust with local law enforcement. That involves open lines of communication with an emphasis on listening to the suggestions of law enforcement executives. And for our nation's sake, please stop undermining the character and integrity of the American law enforcement officer.

Next, resist the urge at the federal level to interfere with local police training standards. Are cops perfect? No, in fact, far from it, but they are our communities' finest. I will resist attempts by the USDOJ to dictate one-size-fits-all local law enforcement training standards. Every community is unique in what will work, and what will not work.

Lawyers at the Department of Justice are ill-equipped in the area of local police training. We already have state standards for training, tailored toward what works in each individual state. Additionally, in Milwaukee County I am elected by and accountable to the people if they do not approve of my training policies. Police chiefs have mayors and other oversight boards for accountability. We do not need another layer of bureaucracy.

And finally, I want to speak on two emerging issues on the radar screen in criminal justice: sentencing and prison reform.

Any discussion about reform in these two areas that does not include a counterview about the consequences of a short-term technical fix and its impact on crime victims, will have catastrophic consequences on already stressed Black and Hispanic communities. Artificially reducing prison populations or altering sentencing

practices is short-sighted. If these policies fail, the loser will be my people, Black people living in impoverished, crime-ridden communities.

The recidivist nature of criminals will cause more minorities to be victimized by violence, similar to what happened this past summer in Milwaukee to Sierra Guyton, a 10-year-old girl shot in the head and killed while on a school playground. The shooters were career criminals, felons in possession of firearms, who got into a gun fight on a playground. Both had received light sentences for previous felony acts.

The Black community does not have the support structures in place for an influx of career criminal inmates sent back into the community from prison, or to deal with the habitual criminals who currently reign terror in neighborhoods. People cannot find meaningful work, poverty is generational, parents have to send their kids to failing K-12 schools, and the family structure is in tatters. Adding more crime and violence to that mix will only bring more misery to the overwhelming number of decent, Black law-abiding citizens just trying to get through life against already great odds.

A more advisable criminal justice policy reform approach is to attack the pathologies that increase the likelihood of criminal behavior. The best prison and sentencing reform is to enact policies that reduce unemployment, improve K-12 public education, reduce father-absent homes, and send a message that criminal behavior will be met with severe consequences. That is called accountability for unwanted behavior. Reform that simply lowers the bar is nothing more than normalizing criminal behavior.

Testimony of Catherine Engelbrecht
United States Senate Committee on the
Judiciary
U.S. Attorney General Nomination Hearing
January 29, 2015

Catherine Engelbrecht
Founder
True the Vote
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Good morning Mr. Chairman and Members of the Committee. Thank you for inviting me to participate in today's hearing. My name is Catherine Engelbrecht. I am the Founder of True the Vote, a national nonprofit initiative to protect voters' rights and promote election integrity.

I'm here today because I was targeted by the government for daring to speak out. I'm here as one of thousands of Americans who have become living examples of a kind of trickle down tyranny that is actively endorsed by the current Administration and rigorously enforced by the Department of Justice. I'm here because this confirmation can bring needed reform to one of the federal government's most powerful agencies.

It is my earnest hope that our next Attorney General will lead with unwavering commitment to fair and equal justice. That they will stand for all Americans, without concern of political beliefs, religious preference or pigment of skin. Find that Attorney General, so that no other citizen will ever have cause to share with you the story that brings me here today.

The Department of Justice has made their presence well known in both my personal and professional life. Over the years it has become clear to me that they don't just want True the Vote shut down, they want me broken.

In 2010, I filed two non-profit applications with the IRS, one for True the Vote, and the other for a community group I had also started, called King Street Patriots.

Since those filings in 2010, my private businesses, my nonprofit organizations, and I personally, have been subjected to more than fifteen instances of audit, inquiry, or investigation by federal agencies, including; the IRS, OSHA, ATF, and the FBI.

All of these inquisitions began only after filing applications for tax exemption. There is no other remarkable event, no other rationale, to explain away how for decades I went unnoticed by the federal government, but now find myself on the receiving end of interagency coordination into and against all facets of my life, both public and private.

I shared that same timeline as part of testimony given in a February 2014 hearing before the House Oversight and Government Reform Subcommittee, but time did not permit then or now to give the full account of the cast of characters and confluence of events that fill a binder with over 800 pages worth of government subterfuge. There is, however, a consistent presence that has been engaged in almost every aspect of my story since it first began and that is - the Department of Justice.

For the House hearing, my attorney prepared testimony, which, among other things, spelled out for the Committee why we believed the Department of Justice 'investigation' was a sham. She filed that testimony on Tuesday, February 4, 2014.

Within hours, she received a phone call from the Department of Justice and, for the first time, was told that DOJ wanted to interview me as part of its investigation into the IRS targeting scandal. That was *nine months* after the investigation purportedly commenced.

Ultimately an arrangement was made to meet with the DOJ's Public Integrity Division, but we were told that the Civil Rights Division would also be attending. This is significant because at the same time they wanted to question me, the Civil Rights Division was filing objections and fighting tooth and nail to prevent True the Vote from intervening in the Texas voter ID litigation.

We learned that lawyers from DOJ's Civil Rights Division had zeroed in on True the Vote, conducting a line of questions about me and my organization in another case – and that the Civil Rights Division had generally demonstrated hostility to True the Vote in various proceedings in 2013-14.

The DOJ told my attorney that they wouldn't let me "dictate" who could be present for my interview – so unless I was willing to waive my rights and objections to the involvement of the Civil Rights Division, they would not interview me at all.

A handful of months later we met the Department of Justice in court again, but this time they were representing the IRS in a lawsuit True the Vote filed against the IRS in 2013. DOJ attorneys assured the Judge that there was no more evidence that could be recovered from any of the IRS employees named in our suit. All the contents from all the hard drives had been totally, completely, and absolutely lost. The solid assurance that there was no more data to be discovered was a factor in our Judge's decision to dismiss our case.

One month later, the Inspector General's investigation turned up an additional 2.5 million emails, of which 30,000 were Lois Lerner's.

What I have learned in my experience with the Department of Justice is that, as it is often said, absolute power corrupts absolutely. For six years the Department of Justice has operated as an increasingly rogue agency, where preservation of personal liberties runs a distant second to preservation of political power. Will new leadership be any different?

It was extremely troubling to hear Mrs. Lynch's comments in a speech made earlier this year, when she said that voter ID laws were passed in the deep South so that "minority voters would be disenfranchised" and further, that she applauded DOJ's lawsuits filed against states having ID programs and promised that "those lawsuits will continue".

Voter ID is widely supported in this country. 70% of Americans believe we should show photo identification in order to vote. It is a common sense safeguard to our electoral process. Should we count on continued resistance from a Department of Justice led by Loretta Lynch?

The most significant threat of voter disenfranchisement facing our country was made possible by Executive Amnesty. Drivers License Offices are being flooded with new requests. As a standard part of the program sign up, non-citizens are offered the opportunity to register to vote. And they are registering in droves. Every fraudulent vote cast by a non-citizen voids the honest vote of an

American citizen. We know Mr. Holder is a proponent of amnesty. Where will Mrs. Lynch stand on the issue?

The Department of Justice's investigation into IRS targeting of pro-liberty organizations is, as I've stated before, quite simply, a sham. Are we to expect any more under the leadership of Mrs. Lynch? We can't expect any less.

Attorney General Eric Holder has created a radical, racist agency that metes out social justice on an as needed basis to promote the advancement of a progressive agenda. Will Mrs. Lynch follow in his footsteps or will she turn in a new direction to protect the interests of the average American citizen?

In a 2009 speech, General Holder called America a nation of cowards. If you remember nothing else from my comments, remember this - I am not a coward, I am not a victim, I am a messenger, and I am here to say we are, right now, at the tipping point. Who will this Committee entrust to protect the rights of all citizens? The wrong choice, and one more season of government stoked civil unrest, could well tip our country back into total apathy or forward into complete chaos.

Please be bold, please choose wisely, America is watching. Thank you Mr. Chairman and Committee Members for allowing me this opportunity.

**Statement of Janice K. Fedarcyk
Fedarcyk Consulting LLC
Before the Senate Judiciary Committee
Attorney General Nomination
29 January 2015**

Chairman Grassley, Ranking Member Leahy, and Members of the Committee, it's my pleasure to appear before you this morning to speak about my association with the Attorney General nominee, Loretta Lynch. I wholeheartedly endorse her confirmation from the vantage point of someone who worked closely alongside Ms. Lynch in her role as United States Attorney of the Eastern District of New York during my two years as the Assistant Director in Charge, or ADIC, of the Federal Bureau of Investigation's (FBI) New York Office. I served in that capacity from July 2010 through the time of my retirement in August 2012 after 25 years of service in the FBI.

By way of background as the Assistant Director in Charge of the New York Office I was responsible for the largest field office in the FBI and inherent to that are the most complex and sensitive investigations in all of this nation's law enforcement. The New York Office is truly unique in the breadth and depth of the national security and criminal violations investigated. New York was and will remain the target for the terrorism activities of individuals and groups that espouse their violent agenda. From World Trade Center I in 1993 to the terrorist attacks of 9/11 and beyond, we continue to see this terrorist agenda manifested against New York. As a result, the FBI's resources and the considerable talents of the United States Attorney's Offices in both the Eastern and Southern Districts of New York are almost in a daily undertaking to protect this nation's security. I think it important that the Committee also appreciate the magnitude

of the criminal violations the New York Office worked. These violations ranged from complicated and pervasive financial crimes, the insidious and debilitating effects of organized crime, and the violence associated with national gangs and other violent offenders. Given this challenging environment it was a necessity to establish a substantial partnership with Ms. Lynch and her office. Over the course of the next two years, we formed an effective partnership to address not only the national security and criminal threats but also to engage in outreach and liaison with academia, the private sector, and the public to garner their support and make a positive impact within the community.

The basis for my unquestioned support for Ms. Lynch's nomination is founded upon the numerous successes our offices achieved, the close professional and personal relationship that provided me extraordinary insight into Ms. Lynch both as a United States Attorney and as a person. During our association I was privileged to observe her commitment to mission, her personal involvement in issues that invariably arose in our work as well as those within the broader law enforcement community. In supporting the nomination of Loretta Lynch as the next Attorney General of the United States I'd like to comment on three areas that form the foundation of my recommendation: sound judgment; legal acumen; and, independence.

In all of my interactions with Ms. Lynch her approach to addressing and resolving issues invariably involved gathering information to understand the issue, obtaining inputs from affected stakeholders, and making a decision based upon the facts and the law. A good example is how she managed the complicated relationship with the New York City Police Department (NYPD), engaging them as partners in the war against terrorism while

reinforcing the role of the FBI Joint Terrorism Task Force as the lead investigative entity. While not an attorney, I do recognize that Ms. Lynch was nominated and confirmed twice as the United States Attorney for the Eastern District of New York; served on the Attorney General's Advisory Committee and was named as Chair of the Committee in 2013; and, her favorable reviews by the Executive Office for United States Attorneys which called her "exceptionally well-qualified." Lastly, I have never known Ms. Lynch to make a decision based upon politics or outside influences. Ms. Lynch consistently demonstrated fairness, respect for others, and a deep sense of duty. Under her leadership, the United States Attorney's Office, Eastern District of New York, embraced her qualities in their work.

As I previously stated our offices pursued a multitude of criminal and national security investigations. Our offices successfully investigated and executed the arrest of approximately 138 Mafia figures that represented the largest single day operation against the Mafia in history. This is important to note in order to appreciate the magnitude of this historic effort and the commitment of resources, time and coordination implicated in such an undertaking. Similarly, Ms. Lynch's perseverance and support to the FBI and local law enforcement resulted in the recent indictment and arrest of individuals implicated in the 1978 Lufthansa heist of \$6 million in cash and jewelry, reinforcing her dedication to see justice done despite the lapse of time, in this instance 36 years.

Notable other accomplishments spanned the spectrum of the FBI's national priorities and are examples of Ms. Lynch's many successes in the Eastern District including International Terrorism investigations such as Najibullah Zazi, a terrorist who drove explosives from Colorado to New York. In the financial sector significant

accomplishments included the giant construction company Lend Lease indicted for an overbilling scheme that resulted in \$56 million in fines; a bank fraud involving a former CitiGroup Vice President who embezzled more than \$19 million; securities violations by a Long Island-based company that resulted in \$5.8 million in fines; and, a \$92 million mortgage fraud conspiracy by a New York real estate developer. There were also gang investigations that removed violent offenders off the streets of New York, Brooklyn, and Long Island including an operation that arrested 40 individuals charged with narcotics conspiracy and violent crime violations and the indictment of twelve members of the Bloods street gang on racketeering, murder, drug distribution, and firearms charges.

Public corruption undermines trust in our elected officials. Ms. Lynch and her office was deeply committed to the investigation and prosecution of these priority matters as was demonstrated by the indictment of Pedro Espada, former New York State Senator, and his son for embezzlement from a non-profit health care network receiving federal funding; the indictment of New York State Assemblyman William F. Boylan, Jr. with soliciting more than \$250,000 in bribes in exchange for performing official acts; and, the recent conviction of United States Congressman Michael Grimm for concealing \$900,000 in gross income and lying under oath while a Member of Congress.

Ms. Lynch's recognition that task forces brought the best of interagency investigative resources to bear on entrenched crime problems was integral to broader and deeper successes than would have been the case for any one agency or department to achieve alone. During my tenure in New York, these task forces included the nation's largest Joint Terrorism Task Force; Violent Gang Task Forces; the Long Island Gang

Task Force; the Health Care Task Force; and the Financial Fraud Enforcement Task Force, to name a few.

In closing, I recall an appropriate Abraham Lincoln quote, “Character is like a tree and reputation like a shadow. The shadow is what we think of it; the tree is the real thing.” In my opinion Loretta Lynch is the real thing.

Chairman Grassley, Ranking Member Leahy, and Members of the Committee, thank you for the opportunity to come before you today and share my perspective about Ms. Lynch. I respectfully urge you to speedily confirm her as our nation’s next Attorney General of the United States. I am happy to answer any questions.

Written Testimony of

Stephen H. Legomsky
The John S. Lehmann University Professor
Washington University School of Law
[Legomsky@wulaw.wustl.edu]

Before the

United States Senate
Committee on the Judiciary

Confirmation Hearing on the Nomination of Loretta Lynch
As Attorney General of the United States
January 28-29, 2015

Mr. Chairman and Honorable members of the committee, thank you for the opportunity to testify before you. My name is Stephen H. Legomsky. I am the John S. Lehmann University Professor at the Washington University School of Law. I have taught U.S. immigration law for more than 30 years and am the author (co-author starting with the fifth edition) of the law school textbook "Immigration and Refugee Law and Policy." This book is now in its sixth edition and has been the required text for immigration courses at 183 U.S. law schools since its inception. From 2011 to 2013 I had the honor of serving as the Chief Counsel of U.S. Citizenship and Immigration Services, in the Department of Homeland Security. I have had the privilege of advising both Democratic and Republican administrations and several foreign governments on immigration policy. I have held visiting academic appointments at universities in twelve countries.

Several members of this committee have publicly expressed concerns about the views of Attorney General nominee Loretta Lynch as to the legality of President Obama's recently-announced executive actions on immigration. I have studied these issues carefully. While I appreciate that reasonable minds can and do differ about the *policy* decisions, I take this opportunity to respectfully share my opinion that the President's actions are well within his *legal* authority. I note too that this conclusion is overwhelmingly shared by our country's immigration law professors and scholars. On November 25, 2014, some 135 scholars and teachers of immigration law joined in a letter expressing their view that the recent executive actions are "well within the legal authority of the executive branch of the government of the United States."¹

¹ See <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/executive-action-law-prof-letter.pdf>. The quoted conclusion appears on page 7 of the letter.

The principal executive actions at the heart of the debate are those announced by President Obama, and set forth in official memoranda from Secretary of Homeland Security Jeh Charles Johnson, on November 20, 2014. One memorandum, which I'll refer to here as the "Prosecutorial Discretion Memo," lays out the Secretary's priorities for the apprehension, detention, and removal of aliens.² Generally, this memorandum continues the Department's prioritization of removals that contribute to national security, public safety, and border security. The other memorandum at the center of the debate,³ issued on the same date (and referred to here as the "DACA/DAPA Memo") does two things. First, it expands the "DACA" program, which was originally announced on June 15, 2012.⁴ DACA allows deferred action for certain individuals who arrived in the United States as children. Second, this latter memorandum establishes a program (informally known as "DAPA") that allows deferred action for certain parents of U.S. citizens or lawful permanent residents.

The critics of these actions have charged that they violate the President's duty, imposed by article II, section 3 of the Constitution, to "take Care that the Laws be faithfully executed" -- in this case, the immigration laws. The various arguments seem to me to fall into two main categories. Some of the arguments are meant to show that there is no affirmative legal authority for either the Prosecutorial Discretion Memo or the DACA/DAPA memo. Other arguments are meant to show that these policies actually conflict with either the letter or the spirit of the Immigration and Nationality Act. I consider each of those concerns in turn and then briefly discuss a few miscellaneous arguments that some critics have offered.

A. There is ample legal authority for both the Prosecutorial Discretion Memo and the DACA/DAPA Memo.

1. Prosecutorial Discretion

Prosecutorial discretion is a long-established, and unavoidable, practice in every area of law enforcement today, both civil and criminal. The basic idea is straightforward: When a law enforcement agency has only enough resources to go after a fraction of the individuals whom it suspects of violating the relevant law, it has to make choices. There is no alternative.

In the specific context of immigration, Congress has explicitly authorized -- arguably, in fact, *required* -- the Department of Homeland Security to exercise prosecutorial discretion. In 6 U.S.C. § 202(5), Congress expressly makes the Secretary of Homeland Security "responsible" for "establishing national immigration enforcement policies and priorities." Establishing

² Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants (Nov. 20, 2014).

³ Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents (Nov. 20, 2014).

⁴ Memorandum from Janet Napolitano, Secretary of Homeland Security, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012).

enforcement policies and priorities is the very definition of prosecutorial discretion.

If any further support were needed, the congressional intent can be conclusively inferred from the annual congressional appropriations Acts. Year after year, Congress gives the Administration only enough money to pursue a small fraction of the undocumented population. No one seriously disputes Congress's conscious awareness that its appropriations for immigration enforcement fall far short of what the Administration would need for 100% enforcement. Congress knows that there are about 11 million undocumented immigrants living in the U.S., and it knows that the resources it is appropriating enable the Administration to go after fewer than 400,000 of them per year, less than 4% of that population. In practice, DHS resources are stretched even thinner than that, because (a) a large portion of the resources must be allocated to border apprehensions; and (b) an increasingly higher percentage of unauthorized entries are by nationals of countries other than Mexico; removal of those individuals is far more resource-intensive. This means more than that prosecutorial discretion is unavoidable; it is also the clearest evidence possible that Congress *intends* for the Department of Homeland Security, like practically every other law enforcement agency in the country, to use its discretion to decide how those limited resources can be most effectively deployed.

The appropriations Acts, in fact, do more than simply evidence Congress's intent that the Administration formulate enforcement priorities. They actually mandate a specific priority on the removal of criminal offenders and, within that group of individuals, sub-priorities that depend on the severity of the crime. These mandates have been included in every annual DHS appropriations Act since the one for fiscal year 2009.⁵ As discussed at the end of section B below, the President's recent executive actions adopt precisely these crime-related and other public safety priorities.

For still more support, one need only turn to the decision of the U.S. Supreme Court in *Arizona v. United States*, 132 S.Ct. 2492 (2012). There the Court struck down most of Arizona's immigration enforcement statute, precisely because it would interfere with the broad enforcement discretion of the federal government. On that point the Court was emphatic:

A principal feature of the removal system is the broad discretion exercised by immigration officials. ... *Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all.* ...

Discretion in the enforcement of immigration law embraces immediate human concerns. Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime. The equities of an individual case may turn on many factors, including whether the alien has

⁵ E.g., Consolidated Appropriations Act 2014, Pub. L. 113-76, Div. F, title II, 128 Stat. 5, 251 (2014); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act 2009, Pub. L. 110-239, 122 Stat. 3574, 3659 (Sept. 30, 2008), <http://www.gpo.gov/fdsys/pkg/PLAW-110publ329/pdf/PLAW-110publ329.pdf>.

children born in the United States, long ties to the community, or a record of distinguished military service. Some discretionary decisions involve policy choices that bear on this Nation's international relations. Returning an alien to his own country may be deemed inappropriate even where he has committed a removable offense or fails to meet the criteria for admission. The foreign state may be mired in civil war, complicit in political persecution, or enduring conditions that create a real risk that the alien or his family will be harmed upon return. The dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation's foreign policy with respect to these and other realities.

Id. at 2499 [emphasis added].

These authoritative recognitions of broad prosecutorial discretion – 6 U.S.C. § 202(5), the annual congressional appropriations Acts, and the Supreme Court decision in *Arizona v. United States* – are all specific to immigration law. They are further reinforced by the longstanding judicial endorsements of prosecutorial discretion in law enforcement more generally. One of the leading cases is *Heckler v. Chaney*, 470 U.S. 821 (1985). State prisoners on death row sought to compel the Food and Drug Administration to ban the drug that was to be used for their executions. The Court held that the FDA's decision not to take any enforcement action with respect to that drug was unreviewable because the decision was “committed to agency discretion by law” within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(a)(2). The Court said: “This Court has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, *whether through civil or criminal process*,⁶ is a decision generally committed to an agency’s absolute discretion” [citing several cases]. *Heckler*, 470 U.S. at 831.

The Court relied on the breadth of an enforcement agency’s prosecutorial discretion in concluding that non-enforcement decisions were ordinarily unreviewable. It explained:

First, an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not

⁶ Emphasis added. I highlight this phrase only because one of the witnesses at a Dec. 2, 2014 House Judiciary Committee hearing asserted that prosecutorial discretion is limited to criminal cases and thus does not apply at all to civil enforcement contexts such as immigration. Testimony of Ronald D. Rotunda, *The President's Power to Waive the Immigration Laws*, Comm. on the Judiciary, U.S. House of Reps. (Dec. 2, 2014), at 10-11. Professor Rotunda cites no authority for this novel position. To the contrary, the highlighted language in *Chaney*, together with its explicit recognition of prosecutorial discretion in the indisputably civil context of FDA enforcement, is alone enough to debunk it. The previously-discussed decision in *Arizona v. United States*, in the specific context of immigration, further illustrates that prosecutorial discretion extends to civil enforcement. And if it were otherwise, it would be impossible for civil enforcement agencies to comply with the law unless – as would be rare indeed – they were so flush with resources that they could literally afford to prosecute every actor whom they suspect of having violated the relevant law. Professor Rotunda seeks to distinguish *Chaney* by asserting that it was decided on standing grounds, not on prosecutorial discretion grounds. *Id.* at 16. That claim too is both novel and indefensible. First, the word “standing” never appears anywhere in the opinion. Second, it is unimaginable that a court would hold that a person about to be executed – and with a drug that he argued would cause excruciating pain – lacks enough of a personal interest to establish standing. Third, there is no need to speculate, because the Court made its reliance on the broad nature of the agency’s enforcement discretion explicit, as the passages quoted above illustrate.

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. An agency generally cannot act against each technical violation of the statute it is charged with enforcing. The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities. ...

Id. at 831-32.

One other statement in *Chaney* must be acknowledged. In a footnote, the Court added a dictum on which critics of the President's recently-announced decision have sometimes relied: "Nor do we have a situation where it could justifiably be found that the agency has 'consciously and expressly adopted a general policy' that is so extreme as to amount to an abdication of its statutory responsibilities" [quoting *Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973)]. Such policies, the Court said, "might indicate that such decisions were not 'committed to agency discretion'" (and thus might be judicially reviewable). *Id.* at 833 n.4.

But such is not the case here, because the Administration's recent executive actions do not even approach "an abdication of its statutory responsibilities." The discussion in section A.2.c below elaborates on the limits of prosecutorial discretion. As explained there, even the combination of the Prosecutorial Discretion Memo and the DACA/DAPA Memo will still leave far more undocumented immigrants (and border arrivals) than DHS will have the resources to pursue. Thus, the new policies will not prevent the Administration from continuing to enforce the immigration laws to the full extent the appropriated resources allow. Under those circumstances, as long as the President continues to spend the immigration enforcement resources that Congress has appropriated, then absent some violation of an affirmative congressional mandate (which the next section of this testimony demonstrates does not exist), there is no basis for a claim of abdication.

As the Congressional Research Service has found, "no court appears to have invalidated a policy of non-enforcement founded upon prosecutorial discretion on the grounds that the policy violated the Take Care Clause." Kate Manuel & Tom Garvey, Congressional Research Service, *Prosecutorial Discretion in Immigration Enforcement* (January 17, 2013), at 17. In a unanimous opinion, the Court of Appeals for the Fifth Circuit concluded: "We reject out-of-hand the State's contention that the federal defendants' alleged systemic failure to control immigration is so extreme as to constitute a reviewable abdication of duty." *Texas v. United States*, 106 F.3d 661, 667 (5th Cir. 1997). The important takeaway is the standard that the court carefully articulated for finding an abdication: The State of Texas lost because "[t]he State does not contend that federal defendants are doing *nothing* to enforce the immigration laws or that they have *consciously* decided to abdicate their enforcement responsibilities. Real or perceived *inadequate* enforcement of immigration laws does not constitute a reviewable abdication of duty" [all emphases added]. *Id.* No one can credibly claim that an Administration that is spending all the immigration enforcement resources Congress has given it is doing "nothing" to enforce the laws,

much less that the Administration has “consciously” decided to abdicate its responsibilities. And if an abdication claim could be “reject[ed] out of hand” even then, when the number of unauthorized entries was greater than today and the number of removals lower, there is even less room to intimate that the government’s current policies somehow amount to abdication.

Even *Massachusetts v. EPA*, 549 U.S. 497 (2007), the case most frequently cited by those who seek to narrow the scope of prosecutorial discretion, is perfectly consistent with the recent executive actions. In that case, the EPA had refused to regulate carbon dioxide emissions from motor vehicles. The court found the EPA’s explanations for its decision wanting. Even then, the court did not require the EPA to begin regulating those emissions; it merely remanded the case with instructions for the EPA to provide a better-reasoned explanation for its decision. In contrast, the Obama Administration has provided detailed, reasoned explanations for its prosecutorial discretion priorities (national security, public safety, and border security are rational enforcement priorities and in fact coincide with those that Congress itself has mandated; DACA and DAPA together bring people out of the shadows, keep families together, and recognize the moral innocence of those who were brought here as children).

2. *Deferred Action*

As the above discussion illustrates, there is clear legal authority for prosecutorial discretion in the enforcement of the immigration laws. Still, some ask, what is the affirmative legal authority for employing deferred action as the specific vehicle for these recent exercises of prosecutorial discretion? The answer is that there are multiple explicit sources of legal authority for deferred action.

By way of background, deferred action (originally called “non-priority status”) – and similar programs operating under different names -- have been integral parts of immigration enforcement for more than 50 years.⁷ Congress, well aware of this administrative practice, has never enacted legislation to preclude it or even restrict it.

But the legal authority for deferred action does not rest solely, or even primarily, on congressional acquiescence in a well-known administrative practice. In several statutory provisions, Congress has expressly recognized deferred action by name. For example, 8 USC § 1227(d)(2) says that if a person is ordered removed, applies for a temporary stay of removal, and is denied, that denial does not preclude the person applying for deferred action. In addition, 8 USC § 1154(a)(1)(D)(i)(II,IV) specifically endorses deferred action (and work permits) for certain domestic violence victims and their children. Deferred action also

⁷ See, e.g., Office of Legal Counsel, U.S. Dept. of Justice, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014) [hereinafter OLC Opinion], at 13-20; Shoba Sivaprasad Wadhia, *Beyond Deportation – The Role of Prosecutorial Discretion* (2015), chap. 4; Shoba Sivaprasad Wadhia, *In Defense of Deferred Action and the DREAM Act*, 91 Texas L. Rev. 59 (2013); Leon Wildes, *The Nonpriority Program of the Immigration and Naturalization Service Goes Public: The Litigative Use of the Freedom of Information Act*, 14 San Diego L. Rev. 42 (1976).

qualifies a person for a driver's license under the REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231, Div. B, § 202(c)(2)(B)(viii) (May 11, 2005).

In addition to the statute, the formal regulations of the Justice Department (and now the Department of Homeland Security) have also expressly recognized deferred action by name since at least 1982. See 8 C.F.R. § 109.1(b)(7) (1982) (allowing work permits for deferred action recipients). The regulations describe deferred action as "an act of administrative convenience to the government which gives some cases lower priority." 8 CFR § 274a.12(c)(14). These agency regulations have the force of law.

Finally, a long line of court decisions, including at least one Supreme Court decision, explicitly recognize deferred action by name. See, e.g., *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483-84 (1999); *Mada-Luna v Fitzpatrick*, 813 F.2d 1006 (9th Cir. 1987); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1024 (9th Cir. 1985); *Pasquini v. Morris*, 700 F.2d 658, 661 (11th Cir. 1983); *Nicholas v. INS*, 590 F.2d 802 (9th Cir. 1979); *David v. INS*, 548 F.2d 219, 223 (8th Cir. 1977); *Soon Bok Yoon v. INS*, 538 F.2d 1211, 1213 (5th Cir. 1976); *Vergel v. INS*, 536 F.2d 755 (8th Cir. 1976).

The Supreme Court was emphatic about the broad scope of the executive branch discretion to grant deferred action: "At each stage the Executive has discretion to abandon the endeavor [referring to the removal process], and at the time IIRIRA was enacted the INS had been engaging in a regular practice (which had come to be known as 'deferred action') of exercising that discretion for humanitarian reasons or simply for its own convenience." *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483-84 (1999). Other courts had expressed the same view: E.g., *Pasquini v. Morris*, 700 F.2d 658, 662 (11th Cir. 1983) (granting or withholding deferred action "is firmly within the discretion of the INS" and therefore can be granted or withheld "as [the relevant official] sees fit, in accord with the abuse of discretion rule when any of the [then] five determining conditions is present"); *Soon Bok Yoon v. INS*, 538 F.2d 1211, 1213 (5th Cir. 1976) ("The decision to grant or withhold nonpriority status [the former name for deferred action] therefore lies within the particular discretion of the INS").

Deferred action, then, is well-established, explicitly authorized by multiple sources of legal authority, and extremely broad. Is there, nonetheless, a legal argument that the specific exercises of deferred action in DACA and DAPA are unauthorized? I am aware of three attempts to advance such an argument:

a. Some have occasionally suggested that Congress's decision to mention deferred action in a few specific provisions (mainly for domestic violence victims and individuals who had unsuccessfully sought temporary stays of removal orders) indicates that Congress meant to prohibit deferred action in all other circumstances. That theory relies on the statutory interpretation maxim that (translated from Latin) the express mention of one thing excludes all others. But that principle does not apply here. When an administrative practice is as fundamental, as long entrenched, as integral to administrative practice, and as explicitly and frequently recognized as deferred action has been in statutes, regulations, and court decisions, it

is inconceivable that Congress would abolish virtually the entire practice by vague inference. Had Congress intended to do something that radical, there would surely have been some mention of the issue in the legislative history, there would have been heated debate, and there would have been some clear language in the statute. There is none of these things.

b. A more frequent claim by critics of these executive actions is that deferred action is legal when granted on an individual, case-by-case basis but illegal when granted to an entire class. A variant of this argument is that deferred action is legal if it is granted to a small number of people but illegal if granted to a large group.

The latter version of the argument is a non-starter. As a policy matter, the number of individuals affected by a given set of deferred action criteria is clearly relevant. But none of the legal authorities that recognize deferred action – not Congress, not the executive branch, and not the courts – have stated or even remotely implied that deferred action is legal for a small number of people but illegal for a large number. (There are legal limits to the granting of deferred action, and they are discussed below, but there is no legal authority for the proposition that deferred action is per se illegal whenever it affects a large number of people.)

The distinction between individuals and groups requires slightly more discussion. For the record, I note that nothing in either the statute or the regulations prohibits immigration officials from granting deferred action, or otherwise exercising its prosecutorial discretion, in favor of a class of individuals. As discussed in section C below, previous Presidents have frequently granted either deferred action or some functionally equivalent discretionary relief (for example “deferred enforced departure,” “extended voluntary departure,” “family fairness”) on a class-wide basis to large numbers of undocumented immigrants.

At any rate, both DACA and DAPA expressly require precisely the individualized, case-by-case, discretionary evaluations on which the critics insist – as explained below. Surely, however, that doesn’t mean, and to date none of the critics have identified any legal authority that suggests, that it is illegal for the agency to provide general criteria to guide the evaluation of individual cases.

To the contrary, the courts have consistently recognized the Administration’s broad discretion to implement deferred action by announcing general categorical criteria. The courts were well aware of those categories; often they quoted them in their opinions. Indeed, there is no other way for an agency to guide its officers as to how to exercise that discretion. For example, the Eleventh Circuit in *Pasquini*, above, 700 F.2d at 661, quoted the 1978 INS Operating Instructions’ five criteria for officers to consider: “(1) advanced or tender age; (2) many years presence in the United States; (3) physical or mental condition requiring care or treatment in the United States; (4) family situation in the United States -- affect [sic] of expulsion; (5) criminal, immoral or subversive activities or affiliations.” The court then noted the discretion of the INS district director. *Id.* at 662. The Ninth Circuit in *Nicholas*, above, 590 F.2d at 806-07, likewise quoted the then five general categorical criteria for deferred action. The Supreme Court in *Reno*, above, similarly quoted a treatise that listed the several general categorical criteria the INS was

then instructing officers to consider in deferred action cases. 525 U.S. at 483-84, quoting from 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law and Procedure* § 72.03[2][h]. The fact that the agency had laid out general categorical criteria did not prevent the court from recognizing the agency's use of deferred action.

All of this is consistent with common sense. When an agency sets its enforcement priorities – whether via deferred action or any other vehicle – there are two ways it could proceed. The agency could leave it up to each individual police officer and each individual prosecutor to decide what he or she thinks the agency's enforcement priorities ought to be. Or, as the Secretary of Homeland Security has done here, the agency can formulate those priorities at the leadership level. The latter approach is far preferable. Enforcement priorities are important policy decisions, and important policy decisions should be made by the leaders, who are politically accountable. In addition, only the leadership can disseminate guidance throughout the agency so that the people on the ground know what they are supposed to do, so that these important priorities will be transparent to the public, and so that there will be some reasonable degree of uniformity. Uniformity is essential to equal treatment. To the extent avoidable, the decision whether to arrest or detain or prosecute should not depend on which officer happens to encounter the person or which prosecutor's desk the person's file happens to land on.

Perhaps most crucial of all, there is nothing inconsistent about adopting general threshold criteria at the front end while still requiring individualized, case-by-case discretion at the back end. On this issue there has been a great deal of misinformation. As the following discussion will show, both the Prosecutorial Discretion Memo and the DACA/DAPA Memo embody precisely that combination of steps.

The Prosecutorial Discretion Memo lays out three sets of high enforcement priorities but is replete with language that authorizes officers to deviate from the stated priorities in circumstances that either require them to weigh and balance various factors or are defined in such broad terms as to amount to the exercise of discretion. Some language goes further still, explicitly instructing officers to use their "judgment" (often after consultation with a supervisor). See, e.g., section A, priority 1, last paragraph; priority 2, last paragraph; priority 3, last sentence. Conversely, the memo specifically instructs officers that it is not meant to "prohibit" or even "discourage" enforcement actions against individuals who are *not* priorities; such decisions are similarly assigned to ICE field office directors, who are to use their "judgment" to decide whether removal "would serve an important federal interest" – again, language broad enough to make the resulting decisions highly discretionary. If this were not enough, the memo contains a section D, entitled "Exercising Prosecutorial Discretion," which lists numerous factors that officials "should consider." It even adds "These factors are not intended to be dispositive nor is this list intended to be exhaustive. Decisions should be based on the totality of the circumstances."

The DACA/DAPA Memo takes a similar approach. It repeatedly mandates "case-by-case" evaluation, for both DACA and DAPA (as the original 2012 DACA memo did). At least one critic has suggested that that language might mean that the adjudicator's case-by-case evaluation

is limited to determining whether the person meets the threshold criteria – as opposed to additionally deciding whether discretion should be favorably exercised. Other language in the memo, however, removes any doubt. Section B, after laying out certain threshold criteria for DAPA, expressly limits DAPA to cases that “present no other factors that, *in the exercise of discretion*, makes the grant of deferred action inappropriate” [emphasis added]. And on page 5, the next-to-last paragraph of the memo reinforces this point. It explains that “immigration officers will be provided with specific eligibility criteria for deferred action [for both DACA and DAPA], *but the ultimate judgment as to whether an immigrant is granted deferred action will be determined on a case-by-case basis*” [emphasis added]. Meeting the eligibility criteria, in other words, is not enough.

So both memoranda are filled with clear, careful, explicit, repeated commands to officers to make individualized, case-by-case discretionary judgments. How can critics defend their persistent claims that DACA and DAPA lack individualized consideration when the Secretary’s memoranda that tell officers how they are to decide these requests say precisely the opposite?

With the actual memoranda directly contradicting their claims, some critics have resorted to accusing the Administration of perpetrating a scam. The charge appears to be that in practice no such individual evaluation – or at least no such discretionary determination – ever takes place. Given the wording of the memoranda, this claim amounts to saying that DHS employees have been systematically disobeying the Secretary’s clear and repeated instructions – but without offering any evidence to support that charge or any other reason to expect that result.

Attempts to establish that the practice does not follow the stated policy have been unsuccessful. The states that have sued the Administration in *Texas v. United States*, No. 1:14-cv-00254 (S.D. Tex., filed Dec. 3, 2014), alleged in their complaint that “according to the latest figures available,” up to 99.8% of all DACA requests have been approved. See allegation 25. But they offered no support for that approval rate, and in fact their figure was wildly off. USCIS has been posting detailed statistics on DACA from the outset, and at the time the complaint was filed the USCIS website showed it had already denied more than 32,000 DACA requests. (These are in addition to the more than 40,000 rejections at the receiving point for errors such as incomplete applications, failure to enclose the application fee, etc; i.e., the 32,000 denials were on the merits). See USCIS website, http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_fy2014_qtr4.pdf (through Sept. 30, 2014).⁸

c. One last attack on the specific use of deferred action in DACA and DAPA is the claim

⁸ Those data show an approval rate of 95%, not the nearly 100% claimed by the plaintiffs. While some might assume at first blush that even 95% is a high approval rate, it is not high when one considers who actually files requests for DACA. An undocumented individual with some additional misconduct in his or her background is unlikely to proactively approach the government, reveal his or her name, address, undocumented status, and additional negative information, and provide fingerprints – nor is that person likely to send the government \$465 – if eligibility is unlikely. For all these reasons, DACA requestors tend overwhelmingly to have strong cases. The approval rate of just under 95%, therefore, is no evidence that DACA requests are being rubber-stamped.

that, if these policies are legal, then there are no limits to executive power. A future President, these critics say, could refuse to enforce the civil rights laws, or the labor laws, or the environmental laws, or the consumer safety laws.

But this line of argument is similarly misconceived. DACA and DAPA do not even approach the sort of hypothetical non-enforcement policies that this argument conjures up. If the President were truly to refuse to substantially spend the money Congress had specifically appropriated for enforcing the immigration laws or any of these other laws, then a serious legal issue would certainly arise. But that is not even close to what he has done. Since his first day of taking office, President Obama has spent every penny Congress has given him for immigration enforcement. More important still is this reality: Even after DACA and DAPA are fully operational, there will still remain in this country at least – and this is a conservative estimate – 6-7 million undocumented immigrants to whom these policies don't apply. And as noted earlier the President still will have only enough resources to go after fewer than 400,000 of them per year – i.e., less than 7% of even the non-DACA/DAPA population. Again, the resources are unlikely to permit even 400,000 removals of undocumented immigrants, because those same resources must also be used for border security and, further, because non-Mexican nationals comprise an increasingly large percentage of unauthorized entries and require significantly more resources per removal. Therefore, nothing in these new policies will prevent the President from continuing to enforce the immigration laws to the full extent that the resources Congress has given him will allow. As long as he does so, it is impossible to claim that his actions are tantamount to eliminating all limits.

3. *Work Permits*

In continuing to grant work permits to deferred action recipients who can demonstrate economic necessity, USCIS is exercising a discretionary power expressly granted by Congress, incorporated into the formal regulations, and in active use for more than three decades.

In 8 U.S.C. § 1103(a)(1), Congress charged the Secretary of Homeland Security with “the administration and enforcement” of all the immigration laws (except for any laws that Congress has assigned to other executive officers or departments). Section 1103(a)(3) then instructs the Secretary to “establish such regulations; . . . issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this Act.”

From the earliest days of the Reagan Administration, the former INS (where the analogous immigration responsibilities then resided) understood this authority to include the power to decide which aliens should receive permission to work. See OLC Opinion, note 7 above, at 21 n.11. Exercising this power, the INS regulations specifically authorized work permits for recipients of deferred action. 8 C.F.R. § 109.1(b)(7) (1982). When Congress later enacted the Immigration Reform and Control Act, Pub. L. 99-603, 100 Stat. 3359 (Nov. 5, 1986) [IRCA], it made this authority explicit. It did so in 8 U.S.C. § 1324A(h)(3), which defined the term “unauthorized alien” (meaning an alien who is not authorized to work) as excluding lawful permanent residents and aliens who are “authorized to be so employed by this Act *or by the*

*Attorney General*⁴ [now the Secretary of Homeland Security] [emphasis added]. Congress thus expressly authorized the Attorney General (now the Secretary of Homeland Security) to grant work permits, and specifically to people whom the statute itself does not already authorize to work. And at least since 1982, deferred action recipients have continued to be among the classes of aliens whom the immigration agency (now USCIS) specifically makes eligible for work permits, provided they demonstrate the economic necessity to work. The relevant provision currently appears in 8 C.F.R. § 274a.12(c)(14) (2014). See also *Perales v. Casillas*, 903 F.2d 1043, 1048-50 (5th Cir. 1990) (treating the executive power to decide which aliens may work as “unfettered” and therefore not only discretionary, but so “committed to agency discretion by law” that it is not even subject to judicial review).

Despite this broad and long-accepted authority, some critics of DACA and DAPA have disputed this power. In effect, they argue that the statutory phrase “or by the Attorney General” should be interpreted to mean “or by the Attorney General in cases where this Act already authorizes employment.” See, e.g., Jan Ting, *President Obama’s “Deferred Action” Program for Illegal Aliens is Plainly Unconstitutional* (Dec. 2014), at 18-19, citing John C. Eastman, *President Obama’s “Flexible” View of the Law: The DREAM Act as Case Study*, Roll Call (Aug. 28, 2014). They maintain that the only classes of aliens for whom Congress meant to allow the Attorney General to authorize employment were those whom Congress had already so authorized. That, of course, would render the phrase “or by the Attorney General” superfluous, since the individuals whom Professors Ting and Eastman concede this phrase covers would already be covered by the phrase “by this Act.”

Professors Eastman and Ting attempt to support this interpretation nonetheless. They note that, before the 1986 enactment of IRCA, the Immigration and Nationality Act already (in Professor Ting’s words) “separately authorizes or requires” the Attorney General to grant work permits. They argue that these latter provisions are the ones that would be superfluous if the Attorney General possessed the broader discretion to grant work permits to any class of aliens. But there are two flaws in this argument. First, the argument ignores the *Perales* decision cited above (finding no statutory limits to the work permit authority). Second, the specific provisions cited by Professor Ting are not, as he describes them, ones that “authorize or require” work permits [my emphasis]. The cited provisions are all mandatory.⁹ Their superfluosity argument thus falls apart. There is nothing superfluous about *requiring* the Attorney General to grant work permits to certain classes of aliens and *permitting* the Attorney General to grant them to others.

The only other argument Professor Ting offers on this score is that post-IRCA legislation added some new classes of aliens for whom issuance of work permits was indeed discretionary. Ting, above, at 26 n.80. But that is a thin reed on which to rely. All the cited post-IRCA provisions (relating to domestic violence victims and to nationals of Cuba, Haiti, and Nicaragua) singled out these particular groups for strong humanitarian reasons. The provisions authorizing the grant of work permits to those groups were obviously intended to be ameliorative. If Congress, through a simple charitable act of allowing work permits for those few groups, had thereby intended a

⁹ They include 8 U.S.C. § 1101(i)(2) (requiring work permits for T-visa recipients) and refugees, asylees, and recipients of temporary protected status (all of whom similarly *must* be granted work permits).

change as momentous as the one Professors Ting and Eastman are hypothesizing – i.e. simultaneously prohibiting the grant of work permits to all those who had been eligible since the early 1980s unless specifically singled out elsewhere in the statute – the legislative history would surely have revealed at least a debate on the issue. They assign unrealistic weight to the fact that parts of a humanitarian provision contained language that was unnecessary because of an otherwise more general, unrelated provision of a long statute.

B. Nothing in the recent executive actions conflicts with the Immigration and Nationality Act or any other federal statute.

Critics of DACA and DAPA continually assert that the President’s actions violate, or disregard, or suspend, or ignore the immigration laws. Rarely, however, do they ever attempt to identify any specific provisions of the law that they claim he has violated.

There is one exception. Critics will occasionally cite section 235 of the Immigration and Nationality Act, codified as 8 U.S.C. § 1225. Their argument is as follows: Section 1225(a)(1) defines an “applicant for admission” as “an alien present in the United States who has not been admitted or who arrives in the United States ...” In turn, section 1225(a)(3) says that “[a]ll aliens ... who are applicants for admission ... *shall* be inspected by immigration officers” [emphasis added]. Finally, section 1225(b)(2)(A) provides that “in the case of an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a [removal proceeding]” [emphasis added].

The argument rests on the use of the highlighted word “shall.” The critics interpret this combination of provisions to mean that an immigration officer violates the law unless he or she detains, and initiates removal proceedings against, literally every alien who is believed to be unlawfully present in the United States – regardless of the priorities set by Departmental leadership for deploying its limited enforcement resources.

One federal judge relied on this provision. While holding that the court had no jurisdiction to consider an action brought by ICE agents challenging DACA, the judge suggested in dictum that section 1225 does indeed literally mandate removal proceedings against every alien whom immigration officers believe is not “clearly and beyond a doubt entitled to be admitted.” *Crane v. Napolitano*, Civ. Action No. 3:12-cv-03247-O (N.D. Tex.) (Apr. 23, 2013 and July 31, 2013). Under that interpretation, there is no room for any exercise of prosecutorial discretion.

That line of argument, however, has been thoroughly discredited. A superb law review article by Professor David Martin identifies its many fatal flaws. David A. Martin, *A Defense of Immigration-Enforcement Discretion: The Legal and Policy Flaws in Kris Kobach’s Latest Crusade*, 122 Yale L.J. Online 167 (2012), <http://yalelawjournal.org/forum/a-defense-of-immigration-enforcement-discretion-the-legal-and-policy-flaws-in-kris-kobachs-latest-crusade>. As Professor Martin points out, the argument first of all is immediately inapplicable to the approximately 40% of the undocumented population who were legally admitted on temporary

visas but overstayed. Having already been admitted, they are not “applicants for admission” as expressly defined by section 1225(a)(1). Therefore they do not fall within even the literal language of subsections a(3) and b(2)(A) on which the critics’ argument depends.

But even as to the remaining undocumented immigrants – i.e., those who entered without inspection and whom the statute does classify as applicants for admission – the argument collapses for several reasons. First, the word “shall” is routinely used in the law enforcement context. Interpreting the word “shall” in an analogous subsection of section 1225, the Board of Immigration Appeals explained in *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520 (BIA 2011), that “[i]t is common for the term ‘shall’ to mean ‘may’ when it relates to decisions made by the Executive Branch of the Government on whether to charge an individual and on what charge or charges to bring.” *Id.* at 522, citing a long line of court cases that interpret “shall,” in the enforcement context, as subject to prosecutorial discretion. That result is a matter of common sense. If it were otherwise, then practically every law enforcement agency and every law enforcement officer in the country would be violating the law every day by failing to do the impossible, because almost no agency has the resources to arrest and prosecute every possible offender.

Moreover, that interpretation would be hard to square with the many statutory provisions that expressly authorize officers to use their discretion in deciding whom to refer for removal proceedings. These include not only the deferred action provisions discussed earlier, but also 8 U.S.C. §§ 1182(d)(5)(A) (parole), 1225(a)(4) (withdrawal of application for admission), and 1229c(a)(1) (voluntary departure “in lieu of” removal proceedings). Together, those provisions provide a statutory structure that is incompatible with the notion of mandatory removal proceedings for everyone suspected of being unlawfully present – even if, contrary to reality, there were enough resources to do so.

Finally, even the district court in *Crane* acknowledged that, although in its view the officer was required to issue the Notice to Appear, the officer could then unilaterally cancel the Notice to Appear before the immigration judge acquires jurisdiction, or DHS could move to dismiss the case thereafter. *Crane*, Apr. 23, 2013 Order, above, at 24, citing 8 CFR § 239.2(a,c). The court did not attempt to explain why Congress would require such a wasteful and irrational procedure – i.e., why it would require the immigration officer to detain the person, issue a Notice to Appear, and then cancel the Notice, rather than simply not file the charge in the first place.

At any rate, a subsequent decision by the federal district court for the District of Columbia found that DACA and DAPA were valid exercises of the executive’s well-established prosecutorial discretion. *Arpaio v. Obama*, Civ. Action No. 14-01966 (BHH) (Dec. 23, 2014).¹⁰

Unable to convincingly identify any specific statutory provision with which DACA and DAPA conflict, the critics have often made vague suggestions that these policies violate the spirit, or the overall design, of the immigration laws. Again, given the long history of both prosecutorial discretion generally and deferred action in particular, given the numerous applications of

¹⁰ The court also held the plaintiff lacked standing to bring the suit.

deferred action or similar large-scale relief policies announced by previous Administrations (discussed below), given that until now these types of actions have rarely been questioned, and given the fact that Congress has been well aware of the practice and has never legislated to prevent it, this argument is hard to understand.

Still, some have tried to support the “spirit” argument by citing some of the statutory provisions that allow the government, in its discretion, to grant *lawful permanent resident* status to people who meet certain specific conditions. Their argument is that this shows Congress intended not to allow benefits for those who don’t meet those conditions. But that argument is a nonsequitur. The fact that Congress is willing to give lawful permanent residence – a green card – to only *some* people doesn’t tell us anything about whether the Administration, in setting enforcement priorities, may grant *temporary* reprieves from removal, and *temporary* permission to work, to others. Deferred action, in fact, does not grant anyone an immigration status of any kind, let alone a permanent status; it is merely temporary relief from removal, revocable at any time for any reason.

Along similar lines, some critics have argued that DACA and DAPA are inconsistent with Congress’s failure to pass the DREAM Act and its failure to enact comprehensive immigration reform. Congressional inaction is cast as an indication that Congress objects to broad relief for undocumented immigrants. First, congressional inaction tells us nothing about Congress’s intentions. If it did, then the failed attempt of the 113th Congress to block DACA and DAPA would be at least as indicative of Congress’s intentions as Congress’s failure to enact the DREAM Act or comprehensive immigration reform. Second, again, a congressional decision not to provide a path to *lawful permanent residence* tells us even less about its views on temporary reprieves from removal and temporary permission to work.

Another form of “overall spirit” argument appears in Professor Ting’s article, cited above. He maintains that the recent executive actions (unlike other exercises of prosecutorial discretion) do more than “refrain from detaining and expelling millions of illegal aliens.” Ting, above, at 5. Quoting the OLC opinion, he says they “openly tolerate an undocumented alien’s continued presence in the United States for a fixed period.” *Id.* Professor Ting does not acknowledge how sweeping that argument would be if it led to the conclusion he wants to reach. By his reasoning, deferred action could *never* be permissible (unless, presumably, the person already has a valid immigration status and therefore doesn’t need deferred action). *Any* time deferred action is granted to a person who is not already in lawful status, the person’s continued presence is being “openly tolerated” for some period. That is the tradeoff that the policy benefits of deferred action present and that the long and previously unquestioned administrative practice of deferred action has reflected. At any rate, Professor Ting’s observation – while a relevant, albeit unconvincing policy consideration – does not raise any identifiable legal barriers.

Finally (on the subject of the overall structure of the immigration laws), there is indeed a recurring theme in Congress’s various enactments. Far from supporting the critics of the President’s recent executive actions, however, it affirmatively does the opposite. As noted earlier, both the Prosecutorial Discretion Memo and the DACA/DAPA Memo expressly reflect

the Administration's prioritization of national security, public safety, and border security. These are precisely the priorities that Congress has directed the Administration to pursue. See, e.g., note 5 above (citing annual appropriations Acts prioritizing removal of criminal offenders); 8 U.S.C. §§ 1225(b)(1), 1225(c), 1226(c)(1)(D) (prioritizing national security and border security).

C. Other miscellaneous objections similarly fail.

Some of the critics' legal arguments have been directed at straw persons. Some, for example, have seized on the President's frequent statements that he acted because Congress had failed to act. They have argued that Presidential action doesn't become legal simply because Congress has not acted. But no one claims otherwise. When the President explains that he is acting because Congress has not, he isn't asserting congressional inaction as his *legal* authority for acting. The legal authority comes from the multiple independent sources described in the first two sections of this testimony. The President's references to congressional inaction are simply to make the point that he would have had no policy reason to exercise his legal authority in this way if Congress had fixed the problem legislatively as he has encouraged it to do.

Another argument has been that the President's actions do not become legal simply because previous Presidents have adopted similar policies. (The critics have sought to distinguish the programs of previous Presidents in any event, as discussed below.) While those previous Presidential actions lend *additional* credence to the President's legal authority, the legal authority, again, is independently provided by the many sources of law already described in sections A and B of this testimony. And apart from their supplementary legal value, the analogous actions of his predecessors negate the oft-repeated, but unsupported claim that his actions are so extreme as to be outside the range of acceptable political norms. Undoubtedly, the Administration has also been eager to contrast the congressional and public acceptance of his predecessors' actions with the hyperbolic reactions of many to DACA and DAPA. But the legal authority, again, rests independently on the many sources already described.

Because the critics have also attempted to distinguish the actions of previous Presidents, a few observations about those comparisons might be helpful. In the past several decades, almost every President has used his executive powers to grant temporary reprieves from removal, and temporary permission to work, to large, definable classes of undocumented immigrants -- for humanitarian, foreign policy, or other legitimate reasons. See, e.g., *Arpaio v. Obama*, above, at 6 (summarizing some of the recent Presidents' actions); Bridge Project, *Executive Actions Speak Louder than Words*, <http://www.bridgeproject.com/wp/assets/Executive-Action-8.8.14.pdf>; American Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present* (Oct. 2014), http://www.immigrationpolicy.org/sites/default/files/docs/executive_grants_of_temporary_immigration_relief_1956-present_final_5.pdf.

Despite the obvious parallels, critics of President Obama's recent executive actions have sought to distinguish his predecessors' programs. Professor Ting, for example, observes that Congress eventually passed legislation embracing, rejecting, or limiting some of those policies. Ting,

above, at 9. That, of course, tells us nothing about either their legality or their compliance with political norms at the time the policies were adopted. Ting argues in the paragraph on pages 9-10 that those policies are further distinguishable because they were based on foreign affairs considerations, an area in which the President enjoys special powers. And indeed some of the prior Presidents' actions were based on foreign affairs. But not all were. The Reagan and Bush family fairness programs, which I turn to now, were not based on foreign affairs at all. They were based on family unification, just like DACA and DAPA.

Congress in 1986 had granted legalization to certain undocumented immigrants but not to their spouses and children. IRCA, above, title II. President Reagan immediately granted relief from deportation to the children (provided both parents or a single parent were legalization beneficiaries), and President Bush Senior later extended those benefits to the spouses and granted them work permits as well. These policies were called the "Family Fairness" program. The precise sequence of legislative, executive, and media developments is summarized in Immigration Policy Center, *Reagan-Bush Family Fairness: A Chronological History* (Dec. 9, 2014), <http://www.immigrationpolicy.org/just-facts/reagan-bush-family-fairness-chronological-history> [IPC Chronology].

Professor Ting argues these programs are meaningfully different from DACA and DAPA. He says that "Presidents Reagan and Bush regarded these individuals as victims of an oversight in the drafting of IRCA and worked with Congress to fix it." *Id.* at 10. Ting offers no support for that claim, and the record conclusively shows it to be false. Congress, in passing IRCA, made a conscious decision *not* to cover the family members of the legalization beneficiaries; Presidents Reagan and Bush provided executive relief nonetheless. Among the hard evidence is the Senate Judiciary Committee report on the bill that became IRCA. It specifically says: "It is the intent of the Committee that the families of legalized aliens will obtain no special petitioning right by virtue of the legalization." Interpreter Releases (Oct. 26, 1987), at 1200, 1201, reproducing 1987 INS memo that cites S. Rep. No. 99-131 (99th Cong., 1st Sess. 343 (1985)). See http://www.prwatch.org/files/ins_family_fairness_memo_oct_21_1987.pdf. A Chicago Tribune article adds: "The law said nothing about legalizing children or spouses who came after the start of 1982. *Although Congress considered including them, conservative groups who opposed letting more immigrants into the country derailed the idea.* Moreover, Congress mistakenly assumed that the legalized immigrants would patiently petition the government to let their relatives into the United States" [emphasis added]. Chicago Tribune (Aug. 24, 1990), http://articles.chicagotribune.com/1990-08-24/news/9003110433_1_illegal-immigrants-immigrant-families-deport. The fear was that including the family members could jeopardize passage in the House, where the vote was expected to be extremely close (and in fact was -- the legalization program ended up passing the House by only seven votes). IPC Chronology, above. And on October 7, 1987, the Senate defeated an amendment that would have put the spouses and children on a path to legalization. Two weeks later, the Reagan Administration announced its program for the spouses even as the INS was acknowledging the "clear" intent of Congress to exclude the family members from the IRCA legalization program. *Id.* Thus, even Professor Ting's representation that Presidents Reagan and Bush *thought* Congress's omission of the family members was an oversight in the drafting is not true.

Controversy has also emerged over the expected scale of the Bush Family Fairness program. The Bush program was announced on February 2, 1990. At the time, the predictions as to the number of eligible family members varied widely. In the previous year, the INS Statistical Yearbook said the agency had received 3.1 million applications for IRCA legalization and estimated that approximately 42% of those individuals (that would be about 1.3 million) were married. It reaffirmed that estimate one year later. (On the one hand, the Yearbook did not comment on how many of the spouses already qualified independently for IRCA; on the other hand, it did not have any estimates as to the number of children who would be eligible for Family Fairness.) Two newspapers quoted INS officials as estimating the number of beneficiaries at “more than 100,000 people,” though that estimate appeared to be referring to the predicted number of applicants (expected to be much lower than the number of eligibles because many eligibles were expected not to apply). Another INS spokesperson said it “may run to a million.” A few days later, an INS “Draft Processing Plan” estimated that “greater than one million” would apply. On the same day an INS internal Decision Memorandum to the Commissioner said the program “provides voluntary departure and employment authorization to potentially millions of individuals.” About two weeks after that, INS Commissioner Gene McNary, testifying before the House Judiciary Committee, stated that Family Fairness would cover approximately 1.5 million already present in the United States and appeared to imply that yet another 1.5 million people outside the United States would also become eligible (though Mr. McNary, when contacted in late 2014, suggested he might have been misunderstood). As it turns out, far fewer than those numbers actually applied, largely because the Immigration Act of 1990 opened up alternative avenues for most of these individuals. See IPC Chronology.

Based on the congressional testimony of the then-INS Commissioner and the other data suggesting similar numbers of eligibles, the Obama Administration and numerous advocates have quoted the 1.5 million figure. They have pointed out that, like DACA and DAPA today, it amounted to roughly 40% of the then-existing undocumented population. The critics (including a controversial “fact-check” by Washington Post blogger Glen Kessler, since corrected for serious errors at least twice) have seized on the fact that the actual number of Family Fairness applicants turned out to be much smaller than the Commissioner’s predictions. But the critics (including the “fact-checker”) miss the point, in several respects. First, the key point is not how many actually applied, or even how many were actually eligible (as to which the 1.5 million figure was probably reasonably accurate). Rather, the point was that at the time of President Bush’s announcement his Administration was *predicting* (notwithstanding his protest, 24 years later, that he was misunderstood) that 1.5 million would be eligible and still saw no legal barrier to going forward. Nor was there an outcry from either Congress or the general public.

Perhaps most important of all, while the parallels to Family Fairness make that program a natural point of comparison, one must remember that, even if it were distinguishable, it is still just one of the many examples of executive actions granting temporary reprieves from removal, and temporary permission to work, to large categories of undocumented immigrants. In addition, even the totality of the examples is not being cited as the sole, or even primary, legal authority for DACA and DAPA. As noted earlier, they rest on multiple other sound legal grounds. The

examples are offered mainly to show that DACA and DAPA have not exceeded acceptable political norms and to stress the need to judge President Obama's policies by the same standards that have been applied to previous Presidents.

Finally, the President's opponents like to use the President's own words to try to show that the President himself knows his actions are illegal. They like to cite some spontaneous answers the President has given to questions from the public. The vast majority of the answers they cite are perfectly consistent with DACA and DAPA. Some advocates have asked the President to suspend all deportations, and the President has indeed said he cannot legally do that. He has also said he cannot rewrite the law and that in our constitutional democracy he must follow the law that Congress enacts. All those statements are true. DACA and DAPA don't violate any of those principles unless the President exceeds his legal authority. For all the reasons given, DACA and DAPA do not do so.

Although the main purpose of this testimony is to assure the Committee that the recent executive actions are on solid *legal* footing, I note briefly that these programs serve several common-sense *policy* goals as well. To summarize a few: Most will agree that, with finite resources, it is sensible to prioritize national security, public safety, and border security over separating families and destroying the long-term ties of those who have lived peacefully and productively in their communities for many years. Positive grants of deferred action draw the recipients out of the shadows and into the open. These individuals provide their names, addresses, and histories, and the government performs background checks to assure public safety. Surely this is healthier for everyone than maintaining a permanent underground culture. Police chiefs and other law enforcement professionals know that communities are also safer when undocumented immigrants who are either victims of crimes or witnesses to crimes feel secure enough to report the crimes to the police rather than avoid contact for fear of being deported.¹¹ Federal and state tax revenues from those who receive deferred action will increase.¹² Unscrupulous employers

¹¹ Charlie Beck, Chief of the Los Angeles Police Department, Statement to the U.S. Senate Committee on the Judiciary, *Keeping Families Together: The President's Executive Action on Immigration and the Need to Pass Comprehensive Reform* (December 10, 2014); Richard Biehl, Chief of the Dayton Police Department, et al., Letter to U.S. Senate Committee on the Judiciary (December 9, 2014); James R. Hawkins, Chief of the Garden City Police Department, Statement to the U.S. Senate Committee on the Judiciary, *Keeping Families Together: The President's Executive Action on Immigration and the Need to Pass Comprehensive Reform* (December 10, 2014); National Task Force to End Sexual and Domestic Violence (NTF), Letter to U.S. Senate Committee on the Judiciary (December 9, 2014), <http://4vawa.org/4vawa/2014/12/11/ntf-supports-president-obamas-deferred-action-for-parents-and-expansion-of-the-deferred-action-for-childhood-arrivals-program>.

¹² White House Council of Economic Advisors, *The Economic Effects of Administrative Action on Immigration* (2014), http://www.whitehouse.gov/sites/default/files/docs/cea_2014_economic_effects_of_immigration_executive_action.pdf; Elizabeth H. Shuler, Secretary-Treasurer, AFL-CIO, Statement to the U.S. Senate Committee on the Judiciary, *Keeping Families Together: The President's Executive Action on Immigration and the Need to Pass Comprehensive Reform* (December 10, 2014),

who currently know they can hire unauthorized workers at low wages will no longer have any incentive to hire them over U.S. workers and will no longer be able to drive down overall market wages or working conditions in the process.¹³ And as many have shown, these executive actions can stimulate economic growth in additional ways.¹⁴

Conclusion

Reasonable people of good faith can certainly differ over the precise priorities the President should adopt when enforcing the nation's immigration laws with finite resources. Like the overwhelming majority of other immigration law professors and scholars, however, I believe that the *legal* authority for both the Prosecutorial Discretion Memo and the DACA/DAPA Memo is clear. There are Congress's express assignment of responsibility to the Secretary of Homeland Security for "establishing national immigration enforcement policies and priorities," in 6 U.S.C. § 202(5); the additional broad authority conferred by 8 U.S.C. § 1103(a); the long-settled recognition, by all three branches of our government, of broad prosecutorial discretion; the multiple provisions in which Congress has specifically recognized deferred action by name; the formal regulations that similarly recognize deferred action by name; the court decisions that do the same; the express grant by Congress of the power to decide who may be eligible for work permits; the formal regulations that have long made deferred action recipients specifically eligible for work permits; the absence of numerical limitations in any of these legal sources of authority; and the fact that the recent policy announcements will not prevent the President from continuing to spend all the immigration enforcement resources Congress gives him. All these sources lead to the same conclusion: The President's actions are well within his legal authority.

Thank you once again for the privilege of testifying before this Committee.

<http://www.judiciary.senate.gov/imo/media/doc/12-10-14ShulerTestimony.pdf>, at 2-3.

¹³ *Id.*

¹⁴ *Id.*

Testimony Before the U.S. Senate Judiciary Committee on Behalf of**U.S. Attorney Loretta Elizabeth Lynch****Nominee for the Position of U.S. Attorney General****Washington, DC****January 29, 2015**

Mr. Chairman (*Sen. Chuck Grassley, IA*), Mr. Ranking Member (*Sen. Patrick Leahy, VT*) and members of the Judiciary Committee, my name is Clarence G. Newsome. I am president of the National Underground Railroad Freedom Center based in Cincinnati, Ohio. It is my pleasure and honor to appear before you to support the nomination of Attorney Loretta Elizabeth Lynch for the position of United States Attorney General.

I have known Loretta virtually all of her life. Our family relationships cover a period of 40 or more years. Her family has been associated with several branches of my family by way of the Baptist Church connection and the network of educators in the great state of North Carolina. Her grandfather was a highly regarded and respected clergyman; the same can be said of her father and her brother, both of whom have been distinguished leaders at the state and national levels for some time. For many years her father was a key leader in the life of the General Baptist

State Convention of North Carolina and the National Baptist Convention, USA. Her brother continues in that tradition of leadership even now.

Her father and I have been ministerial colleagues since the 1970s. It was my privilege to teach her brother during the years that I served on the Duke Divinity School faculty. I have been able to maintain a warm personal association with her mother, an esteemed church leader and educator in her own right, for decades. Through her father, brother and mother and mutual family friends I have been able to stay abreast of Loretta's impressive and remarkable rise to a position of preeminent leadership in the life of our nation.

Loretta is the product of one of the most outstanding families in the state of North Carolina. To the degree that virtue counts in our society, I am bold to say that she is the product of one of the most outstanding families in the United States of America. The members of the Lynch family are known for their exemplary character, integrity, excellent achievement, civic-mindedness, commitment to the common good, and deep and compelling sensitivity to the well-being of all people.

Over the years it has been my privilege to witness the development and emergence of the best of who we are as a nation in the person of Loretta. In the religious, educational and social circles in which our families have moved she has had a reputation for being stellar in everything she has done. As a teenager she drew the admiration of adults, and more significantly, her peers as well. She stood out among them without alienating herself from them. She was as approachable then as she is now. Even then she enjoyed a reputation for being level headed, balanced in her thinking and wise in her judgments. She evidenced a level of maturity that was out of the ordinary but only in those ways that garner the respect of young and old alike. As a teenager, Loretta was the daughter every parent would love to have. Early in life, the quality of her character was evident. This is why the cities of Greensboro, where she was born, and Durham, where she graduated from high school, with valedictory honors, claims her as a daughter who has made them proud. All the more proud we North Carolinians will be if she is appointed the first U.S. Attorney General in the state's history.

As a student during her pre-college years she performed at such a high level that it only seemed natural that she would attend and graduate from Harvard University and Harvard Law School. In fact, her career trajectory is consistent with

the extraordinary intellectual ability and prowess, discipline and even courage she demonstrated during her youth. Early on she dared to dream to become the best of the best, and she has accomplished this in the field of law and jurisprudence. As her professional record shows, she has become the best of the best without qualification.

In the way that her career has taken shape I can discern several attributes that are worth noting at a time such as this. First of all, she is an informed independent thinker who listens well and studies hard. Second, she has the capacity to maintain the strength of her own convictions. Third, she is morally grounded and highly principled. Fourth, she acts decisively and judiciously. And fifth, she is a public servant of the highest order, the type that works well with others to bring about good results with positive outcomes. As Attorney General, Loretta would make sure that the outcomes of her work would reflect one of the most important aspects of her job, demonstrating that she cares about protecting all of our nations' families and communities.

As the president of the National Underground Railroad Freedom Center, my portfolio consists of teaching, promoting, advocating and championing freedom

throughout the nation and the world in accordance with the American ideal of freedom. As a grateful citizen of a nation whose freedom is secured and protected by the rule of law, I take great comfort in the thought that Loretta is trustworthy and honest to the core of her being; and that she would exercise her responsibilities objectively and without bias. She would discharge her duties honorably and faithfully. She would demonstrate an unequivocal commitment to the spirit and the letter of the law. She would personify the nobility, righteous aspirations and enduring promise of a self-governing people.

Thank you.

**Hearing Before
The United States Senate
Committee on the Judiciary:**

**The Nomination of Loretta Lynch
to be Attorney General of the United States**

January 29, 2015

**Prepared Statement
of**

**NICHOLAS QUINN ROSENKRANZ
PROFESSOR OF LAW
GEORGETOWN UNIVERSITY LAW CENTER
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SENIOR FELLOW IN CONSTITUTIONAL STUDIES
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WASHINGTON, DC**

Mr. Chairman, Ranking Member Leahy, Members of the Committee: I thank you for the opportunity to testify at this momentous Hearing. The Committee has rightly chosen to explore not just the qualifications of the nominee but also the proper role of the office of Attorney General. I myself take no position on the ultimate question of whether Loretta Lynch should be confirmed. Rather, I offer some observations on the proper role of the Attorney General, and some comments, alas, on the ways in which, during the tenure of Eric Holder, this Administration has fallen short of its constitutional obligations.

I. Advising The President

You have explored at length the Attorney General's weighty responsibility to supervise the various components of the Department of Justice. But, as you know, the most important responsibility of the Attorney General is not the supervision of the tens of thousands who work beneath her; it is the solemn counsel that she gives to the one who works above. Her most important job is to give sound legal advice to the President of the United States.

This is the one obligation that is imposed upon the Attorney General, as "principal Officer," by the Constitution itself. Under Article II, "The President . . . may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices."¹ Congress echoed this constitutional obligation from the beginning, when it created the office of Attorney General: "[T]here shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful

¹ U.S. CONST. art. II, § 2, cl. 2.

execution of his office; whose duty it shall be . . . to give his advice and opinion upon questions of law when required by the President of the United States”² And today, the statutory obligation is the same: “The Attorney General shall give his advice and opinion on questions of law when required by the President.”³

The most important dimension of this function is to advise the President on the scope of his executive powers and duties.⁴ And this aspect of the job is much harder than it sounds. The President may ask his Attorney General: “May I do X?” or “How may I do Y?” And the Attorney General should rightly explore all legal options for the President to achieve his goals. But at the end of the day, if no legal options are available, the Attorney General must be prepared to say: “No, Mr. President, you have no constitutional power to do that.”

The fortitude—the rectitude—required to say “no” to the President is perhaps the single most important job criterion for Attorney General of the United States.⁵ And I am afraid that it is particularly important now, in an Administration that is inclined to press the outer bounds of executive power.

In particular, the President is obliged to “take Care that the Laws be faithfully executed,”⁶ but in the past six years, he has instituted several controversial policies that are, I believe, in serious tension with this solemn obligation. Pursuant to authority delegated by the Attorney General, the Office of Legal Counsel⁷ has produced at least a few dubious⁸ opinions⁹ countenancing some of these policies. And, at least as far as we know, there has been no word of protest from the current Attorney General.

² Judiciary Act of 1789, ch. 20, § 35, 1 Stat. 73, 93.

³ 28 U.S.C. § 511.

⁴ David J. Barron, Acting Assistant Attorney General, Memorandum for Attorneys of the Office of Legal Counsel Re: Best Practices of OLC Legal Advice and Written Opinions (July 16, 2010), <http://www.justice.gov/sites/default/files/olc/legacy/2010/08/26/olc-legal-advice-opinions.pdf> (“From the Washington Administration through the present, Attorneys General, and in recent decades the Office of Legal Counsel, have served as the source of legal determinations regarding the executive’s legal obligations and authorities.”).

⁵ Ideally, the need to say “no” should arise very infrequently, but when it does, nothing could be more important. Perhaps the proudest day in the history of the Office was October 20, 1973, when Attorney General Elliot Richardson and Deputy Attorney General William French Smith said “no” to President Nixon and resigned. See Douglas E. Kneeland, *Nixon Discharges Cox For Defiance; Abolishes Watergate Task Force; Richardson And Ruckelshaus Out*, N.Y. TIMES, Oct. 21, 1973, <http://www.nytimes.com/learning/general/onthisday/big/1020.html>; Carroll Kilpatrick, *Nixon Forces Firing of Cox; Richardson, Ruckelshaus Quit*, WASH. POST, Oct. 21, 1973, <http://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/102173-2.htm>.

⁶ U.S. CONST. art. II, § 3.

⁷ DEPARTMENT OF JUSTICE, OFFICE OF LEGAL COUNSEL, <http://www.justice.gov/olc/opinions-main> (“The authority of the Office of Legal Counsel to render legal opinions derives from the authority of the Attorney General [T]he Attorney General has delegated to the Office of Legal Counsel responsibility for . . . assisting the Attorney General in the performance of his function as legal adviser to the President.”).

⁸ See, e.g., Michael J. Glennon, *The Cost of “Empty Words”: A Comment on the Justice Department’s Libya Opinion*, HARV. NAT’L SECURITY J. (Apr. 14, 2011), available at <http://harvardnsj.org/2011/04/the-cost-of-empty-words-a-comment-on-the-justice-departments-libya-opinion-2/>; Jack L. Goldsmith, *Office of Legal Counsel Opinion on Libya Intervention*, LAWFAREBLOG.COM (Apr. 7, 2011, 1:32 PM), <http://www.lawfareblog.com/2011/04/office-of-legal-counsel-opinion-on-libya-intervention/>; David B.

For the balance of my testimony, I will discuss the content of the President’s Take Care Clause obligation, and I will try to put some of these recent controversial policies in this proper constitutional context.¹⁰ I hope that the Committee will thoroughly explore the nominee’s conception of faithful execution of the laws, and her resolve to advise the President when he risks running afoul of this constitutional obligation.

II. The Take Care Clause

The relevant clause of the Constitution is the Take Care Clause: “*The President ... shall take Care that the Laws be faithfully executed.*”¹¹ To put these recent controversies in constitutional context, it is essential to understand the meaning and purpose of this Clause. As always, it is best to begin by parsing the constitutional text.

First, notice that this Clause does not grant power but rather imposes a duty: “The President ... *shall* take Care...”¹² This is not optional; it is mandatory. Second, note that the duty is personal. Execution of the laws may be delegated, but the duty to “*take Care that the Laws be faithfully executed*”¹³ is the President’s alone. Third, notice that the President is not required to take care that the laws be “completely” executed; that would be impossible given finite resources. The President does have power to make enforcement choices—however, he must make them “faithfully.” Finally, it is important to remember the historical context of the clause: English kings had claimed the power to suspend laws unilaterally,¹⁴ but the Framers expressly rejected that practice. Here, the executive would be obliged to “take Care that the Laws be faithfully executed.”¹⁵

With these principles in mind, it is possible to view recent controversies through the proper constitutional lens. For this purpose, I shall focus on three recent examples—though, sadly, there are many others that one could choose. I shall focus on the

Rivkin Jr. & Elizabeth Price Foley, *Obama’s Immigration Enablers*, WALL ST. J., Nov. 24, 2014, available at <http://www.wsj.com/articles/david-rivkin-and-elizabeth-price-foley-obamas-immigration-enablers-1416872973>.

⁹ See Memorandum Opinion from Karl R. Thompson, Principal Deputy Assistant Attorney General, Office of Legal Counsel, to the Sec’y of Homeland Security and the Counsel to the President, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014), <http://www.justice.gov/sites/default/files/olc/opinions/attachments/2014/11/20/2014-11-19-auth-prioritize-removal.pdf>; Memorandum from Caroline D. Krass, Principal Deputy Assistant Attorney General, Office of Legal Counsel, to the Attorney General, *Authority to Use Military Force in Libya* (Apr. 1, 2011), http://www.justice.gov/sites/default/files/olc/opinions/2011/04/31/authority-military-use-in-libya_0.pdf.

¹⁰ In what follows, I draw substantially from my testimony a year ago before the House Judiciary Committee. See *The President’s Constitutional Duty to Faithfully Execute the Laws: Hearing Before the H. Comm. on the Judiciary*, 113th Cong. (2013) (statement of Prof. Nicholas Quinn Rosenkranz).

¹¹ U.S. CONST. art. II, § 3.

¹² *Id.* (emphasis added).

¹³ *Id.* (emphasis added).

¹⁴ F.W. MAITLAND, *THE CONSTITUTIONAL HISTORY OF ENGLAND: A COURSE OF LECTURES DELIVERED*, 302–03 (1st ed. 1908 & reprint 1919).

¹⁵ U.S. CONST. art. II, § 3. See also Michael W. McConnell, *Op-Ed: Obama Suspends the Law*, WALL ST. J. (July 8, 2013), <http://online.wsj.com/article/SB10001424127887323823004578591503509555268.html>.

President's unilateral decision to suspend certain provisions of the Affordable Care Act, on the President's unilateral abridgement of the Immigration and Nationality Act, and on the IRS's targeting of the President's political adversaries.

III. ObamaCare Suspension

On July 2, 2013, just before the long weekend, the Obama Administration announced via blog post that the President would unilaterally suspend the employer mandate of ObamaCare¹⁶—notwithstanding the unambiguous command of the law. The statute is perfectly clear: It provides that these provisions become effective on January 1, 2014.¹⁷ The blog post—written under the breezy Orwellian title “Continuing to Implement the ACA in a Careful, Thoughtful Manner”—makes no mention of the statutory deadline.¹⁸

This blog post raises the question of what it means to “take Care that the Laws be faithfully executed.” Certainly, the adverb “faithfully” gives the President broad discretion about how best to deploy executive resources and how best to execute the laws. And the precise scope of this discretion may be the subject of legitimate debate. But this breathtaking blog post was not a mere exercise of prosecutorial discretion or a necessary calibration of executive resources. This was a wholesale suspension of law, in the teeth of a clear statutory command to the contrary. Whatever it may mean to “Take Care that the Laws be faithfully executed,” it simply cannot mean declining to execute a law at all.

As if the suspension weren't enough, President Obama's comments about it on August 9, 2013—claiming that “the normal thing [he] would prefer to do” is seek a “change to the law”¹⁹—added insult to constitutional injury. Indeed, the President seemed annoyed when *The New York Times* dared to ask him the constitutional question.²⁰ As for Republican congressmen who questioned his authority, Mr. Obama said only: “I'm not concerned about their opinions—very few of them, by the way, are lawyers, much less constitutional lawyers.”²¹ Mr. Obama made no mention of, for example, Iowa Sen. Tom Harkin—a Democrat, a lawyer and one of the authors of ObamaCare—who asked exactly

¹⁶ Mark J. Mazur, *Continuing to Implement the ACA in a Careful, Thoughtful Manner*, U.S. DEP'T OF THE TREASURY (July 2, 2013), <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx>. The Obama Administration suspended implementation of 26 U.S.C. § 6055, 26 U.S.C. § 6056, and 26 U.S.C. § 4980H.

¹⁷ The Patient Protection and Affordable Care Act, Pub.L. 111-148, § 1502(e), 124 Stat. 119, 252 (March 23, 2010) (“The amendments made by this section shall apply to calendar years beginning after 2013.”); *id.* § 1513(d), 124 Stat. at 256 (“The amendments made by this section shall apply to months beginning after December 31, 2013.”).

¹⁸ See Mazur, *supra* note 7.

¹⁹ President Barack Obama, Remarks by the President in a Press Conference, (Aug. 9, 2013), <http://www.whitehouse.gov/the-press-office/2013/08/09/remarks-president-press-conference>.

²⁰ See Jackie Calmes & Michael D. Shear, *Interview with President Obama*, N.Y. TIMES (July 27, 2013), http://www.nytimes.com/2013/07/28/us/politics/interview-with-president-obama.html?pagewanted=all&_r=0.

²¹ *Id.*

the right question: “This was the law. How can they change the law?”²² Senator Harkin’s point, of course, is that a change like this is inherently legislative; it requires an amendment to the statute itself.

But the President has been distinctly ambivalent about any such amendment. At the time, he made a point of saying that he would like to “simply call up the Speaker” of the House to request a “change to the law” that would achieve his desired delay.²³ But the truth, as the President knows, is that he wouldn’t even have needed to pick up the phone: On July 17, 2013, the House of Representatives passed the Authority for Mandate Delay Act (with 229 Republicans and 35 Democrats voting in favor).²⁴ This would have authorized President Obama’s desired suspension of the law.²⁵

But President Obama did not actually welcome this congressional ratification. To the contrary, this bill—which stood to fix the constitutional problem that he himself had created—the President deemed “unnecessary.”²⁶ Indeed, he actually threatened to veto it.²⁷ In this case, it appeared that the President would actually prefer to flout the law as written, rather than support a statutory change that would achieve his desired result. This seems an almost willful violation of the Take Care Clause.

IV. Immigration and Nationality Act Suspension

The second example, immigration, is almost an exact mirror of the first. In the ObamaCare context, the President suspended an Act of Congress—a statute that was duly passed by both Houses of Congress, and which he himself had signed into law. In the immigration context, the situation is the opposite. Rather than declining to comply with a duly enacted statute, the President has decided to comply meticulously—with a bill that never became a law.

Congress has repeatedly considered a statute called the DREAM Act, which would exempt a broad category of aliens from the Immigration and Nationality Act (INA).²⁸ The President favored this Act, but Congress repeatedly declined to pass it.²⁹ So,

²² Jonathan Weisman & Robert Pear, *Seeing Opening, House G.O.P. Pushes Delay on Individual Mandate in Health Law*, N.Y. TIMES (July 9, 2013), <http://www.nytimes.com/2013/07/10/us/politics/house-gop-pushes-delay-on-individual-mandate-in-health-law.html>.

²³ President Barack Obama, Remarks by the President in a Press Conference, (Aug. 9, 2013), <http://www.whitehouse.gov/the-press-office/2013/08/09/remarks-president-press-conference>.

²⁴ See Authority for Mandate Delay Act, H.R. 2667, 113th Cong. (2013). For final vote results for H.R. 2667, see <http://clerk.house.gov/evs/2013/roll361.xml>.

²⁵ See Authority for Mandate Delay Act, H.R. 2667, 113th Cong. (2013).

²⁶ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY, (July 16, 2013), http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr2668r_20130716.pdf.

²⁷ *Id.*

²⁸ See Elisha Barron, *The Development, Relief, and Education for Alien Minors (Dream) Act*, 48 HARV. J. ON LEGIS. 623, 633 (2011); Robert J. Delahunty & John C. Yoo, *Dream On: The Obama Administration’s Nonenforcement of Immigration Laws, the Dream Act, and the Take Care Clause*, 91 TEX. L. REV. 781, 783-784, 789 (2013).

on June 15, 2012, the President announced that he would simply not enforce the INA against the precise category of aliens described in the DREAM Act.³⁰ He announced, in effect, that he would behave as though the DREAM Act had been enacted into law, though it had not.³¹

Once again, the President does have broad prosecutorial discretion and broad discretion to husband executive resources. But in this case, it is quite clear that the President is not merely trying to conserve resources. After all, his Solicitor General recently went to the Supreme Court to forbid Arizona from helping to enforce the INA.³² And exempting as many as 1.76 million people from the immigration laws goes far beyond any traditional conception of prosecutorial discretion.³³ More to the point, this exemption has a distinctly legislative character. It is not a decision, in a particular case, that enforcement is not worth the resources; rather it is a blanket policy which exactly mirrors a statute that Congress declined to pass.³⁴ To put the point another way, the President shall “take Care that the *Laws*”—capital “L”—“be faithfully executed”—not those bills which fail to become law. Here, in effect, the President is faithfully executing the DREAM Act, which is not law at all, rather than the Immigration and Nationality Act, which is supreme law of the land. The President cannot enact the DREAM Act unilaterally, and he cannot evade Article I, section 7,³⁵ by pretending that it passed when it did not.

The President’s most recent immigration policy, which effectively exempts several million more people from the Immigration and Nationality Act, is explicitly justified in the same way. The President complains that Congress has failed to enact his chosen policy into law, and this failure, he says, gives him license to decline to enforce

²⁹ The Dream Act of 2011 did not move past the committee stage in either the House or the Senate. *See* Development, Relief, and Education for Alien Minors Act of 2011, H.R. 1842, 112th Congress (2011); Development, Relief, and Education for Alien Minors Act of 2011, S. 952, 112th Congress (2011).

³⁰ President Barack Obama, Remarks by the President on Immigration (June 15, 2012), <http://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration>.

³¹ *See id.*; Memorandum from Janet Napolitano, Sec’y, U.S. Dep’t of Homeland Sec., to David V. Aguilar, Acting Comm’r, U.S. Customs & Border Prot., Alejandro Mayorkas, Dir., U.S. Citizenship & Immigration Servs. & John Morton, Dir., *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT (June 15, 2012), <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

³² *See* Brief for Respondent United States at 26, *Arizona v. United States*, 132 S. Ct. 2492 (2012) (No. 11-182). The Solicitor General argued that “Arizona’s attempt to punish violations of federal law intrudes on exclusive federal authority.”

³³ JEANNE BATALOVA & MICHELLE MITTELSTADT, MIGRATION POLICY INST., RELIEF FROM DEPORTATION: DEMOGRAPHIC PROFILE OF THE DREAMERS POTENTIALLY ELIGIBLE UNDER THE DEFERRED ACTION POLICY 1 (2012), available at http://www.migrationpolicy.org/pubs/FS24_deferredaction.pdf.

³⁴ *See* Memorandum from Janet Napolitano, *supra* note 22. *See also In re Aiken Cnty.*, 725 F.3d 255 (D.C. Cir. 2013) (Kavanaugh, J.) (“[T]he President may not decline to follow a statutory mandate or prohibition simply because of policy objections. Of course, if Congress appropriates no money for a statutorily mandated program, the Executive obviously cannot move forward. But absent a lack of funds or a claim of unconstitutionality that has not been rejected by final Court order, the Executive must abide by statutory mandates and prohibitions.”).

³⁵ U.S. CONST. art. I, § 7 (requiring bicameralism and presentment for a bill to become a law).

the immigration laws as written.³⁶ But the Take Care Clause has no such exception:³⁷ “The President shall take care that the Laws”—even the ones he dislikes—“be faithfully executed.”³⁸

Indeed, the President himself made this exact point, eloquently, just a few years ago:

America is a nation of laws, which means I, as the President, am obligated to enforce the law.... With respect to the notion that I can just suspend deportations through executive order, that’s just not the case, because there are laws on the books that Congress has passed... There are enough laws on the books by Congress that are very clear in terms of how we have to enforce our immigration system that for me to simply through executive order ignore those congressional mandates would not conform with my appropriate role as President.³⁹

More recently, in response to a heckler, the President expressly denied that he has “a power to stop deportation for all undocumented immigrants in this country.”⁴⁰ He reiterated:

[W]e’re also a nation of laws. That’s part of our tradition. And so the easy way out is to try to yell and pretend like I can do something by violating our laws. And what I’m proposing is the harder path, which is to use our democratic processes to achieve the same goal that you want to achieve.⁴¹

What the President did not explain is how his current immigration policy is consistent with that principle.

³⁶ See President Barack Obama, Remarks by the President in Address to the Nation on Immigration (Nov. 20, 2014) (transcript available at <http://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>) (“[I]t would be the law . . . [b]ut for a year and a half now, Republican leaders in the House have refused to allow that simple vote. . .”).

³⁷ See, e.g., Josh Blackman, *The Constitutionality of DAPA Part I: Congressional Acquiescence to Deferred Action*, 103 GEO. L.J. ONLINE (forthcoming 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2545544; Josh Blackman, *The Constitutionality of DAPA Part II: Faithfully Executing the Law*, 19 TEX. REV. L. & POL. (forthcoming 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2545558; Editorial Board, *President Obama’s unilateral action on immigration has no precedent*, WASH. POST, Dec. 3, 2014, available at http://www.washingtonpost.com/opinions/president-obamas-unilateral-action-on-immigration-has-no-precedent/2014/12/03/3fd78650-79a3-11e4-9a27-6fdb612bff8_story.html (“Republicans’ failure to address immigration also does not justify Mr. Obama’s massive unilateral act . . . [it] flies in the face of congressional intent”).

³⁸ U.S. CONST. art. II, § 3.

³⁹ President Barack Obama, Remarks by the President at Univision Town Hall (Mar. 28, 2011), <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-univision-town-hall>.

⁴⁰ President Barack Obama, Remarks by the President on Immigration Reform—San Francisco, CA (Nov. 25, 2013), <http://www.whitehouse.gov/the-press-office/2013/11/25/remarks-president-immigration-reform-san-francisco-ca>.

⁴¹ *Id.*

V. IRS Targeting

The third example is troubling in a different way. As is now well known, the IRS subjected Tea Party organizations to Kafkaesque scrutiny and delay, particularly in the run-up to the last election. A House Oversight Committee hearing revealed that the IRS Chief Counsel's Office had played a key role.⁴² The Committee rightly zeroed in on this fact, because the Chief Counsel is one of only two political appointees at the IRS,⁴³ appointed by President Obama⁴⁴ and confirmed by the Senate.⁴⁵ But what was missing from the hearing—and what has been missing from the commentary throughout—is the constitutional context of this scandal.

The President has, of course, been at pains to distance himself from this scandal. But, again, recall that the duty to “take Care” is personal. Execution of the laws may be delegated; indeed, the Clause clearly contemplates that other officers—like the IRS Chief Counsel—will do the actual executing. But the duty to “*take Care* that the Laws be faithfully executed” is the President's alone. For this reason, what the President knew and when he knew it is, in a certain sense, beside the point; the right question is what he *should* have known. It will not do for the President to say (erroneously) that the IRS is an “independent agency” or to say (implausibly) that he learned about IRS targeting “from the same news reports” as the rest of us.⁴⁶ Not knowing what an executive agency is up to—let alone not knowing that the IRS is, in fact, a bureau of an executive agency that answers to the President—is not taking care that the laws be faithfully executed. If the President was negligent in his supervision of the IRS (or somehow unaware that it was subject to his supervision), then he failed in his duty to take care.

Now, again, it is true that the President is not required to take care that the laws be “completely” executed; that would be impossible given finite resources. The President does have power to make enforcement choices—however, he must make them “faithfully.” If the President lacks the resources to prosecute all bank robbers, he may choose to prosecute only the violent bank robbers; but he cannot choose to prosecute only the Catholic bank robbers.⁴⁷ Invidious discrimination is not faithful execution.

⁴² Written Testimony of Carter Hull, Before the House Oversight and Gov't Reform Comm. (July 18, 2013), <http://oversight.house.gov/wp-content/uploads/2013/07/Hull-Testimony-Final.pdf>.

⁴³ See 26 U.S.C. § 7803(b)(1).

⁴⁴ Press Release, The White House: Office of the Press Sec'y, President Obama Announces More Key Treasury Appointments (Apr. 17, 2009), <http://www.whitehouse.gov/the-press-office/president-obama-announces-more-key-treasury-appointments>.

⁴⁵ Press Release, U.S. Dep't of the Treasury, William J. Wilkins Confirmed as Chief Counsel for the Internal Revenue Service, Assistant General Counsel for Treasury (July 28, 2009), <http://www.treasury.gov/press-center/press-releases/Pages/tg245.aspx>.

⁴⁶ See President Barack Obama, Remarks by President Obama and Prime Minister Cameron of the United Kingdom in Joint Press Conference, (May 13, 2013), <http://www.whitehouse.gov/the-press-office/2013/05/13/remarks-president-obama-and-prime-minister-cameron-united-kingdom-joint->. The IRS is part of the Department of Treasury, not an independent agency. See 26 USC § 7803 (placing the IRS Commissioner in the Department of the Treasury, and making him removable at the will of the President).

⁴⁷ See *Smith v. Meese*, 821 F.2d 1484, 1492 (11th Cir. 1987).

Discriminatory enforcement on the basis of religion would have horrified the Framers of the Constitution. But there is one kind of discrimination that would have worried them even more—the one kind that could undermine the entire constitutional structure: political discrimination. *The single most corrosive thing that can happen in a democracy is for incumbents to use the levers of power to stifle their critics and entrench themselves.*⁴⁸ This is devastating to a democracy, because it casts doubt on the legitimacy of all that follows. Ensuring that this does not happen is perhaps the single most important imperative of the President’s duty to take care that the laws be faithfully executed. If he gives only one instruction to his political appointees, it should be this: *do not discriminate on the basis of politics in your execution of the laws.*

This, sadly, is the gravamen of the IRS scandal. Congress enacted a neutral provision of the tax code, but an executive agency enforced it non-neutrally, discriminating on invidious grounds. It discriminated against the Tea Party,⁴⁹ the most potent political force that the President’s party faced in the mid-term elections. It discriminated against those who “criticize how the country is being run.”⁵⁰ For good measure, it reportedly discriminated against those “involved in . . . educating on the Constitution and the Bill of Rights.”⁵¹ And it did all this while an embattled incumbent President was running for re-election.⁵²

The President may, alas, urge his supporters to “punish our enemies”⁵³; but he cannot stand oblivious while the IRS does just that. He may, alas, berate the Supreme Court for protecting political speech⁵⁴; but he cannot turn a blind eye while the IRS muzzles his critics with red tape. He may, alas, call right-leaning groups a “threat to our democracy”⁵⁵—but the real, cardinal threat is unfaithful execution of the laws.

⁴⁸ See John Hart Ely, *Gerrymanders: The Good, the Bad, and the Ugly*, 50 STAN. L. REV. 607, 621 (1998).

⁴⁹ TREASURY INSPECTOR GEN. FOR TAX ADMIN., INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW 5 (May 14, 2013), <https://docs.google.com/viewer?url=http://www.washingtonpost.com/blogs/wonkblog/files/2013/05/201310053fr-revised-redacted-1.pdf&chrome=true> [hereinafter INAPPROPRIATE CRITERIA].

⁵⁰ *Id.* at 6, 35.

⁵¹ *Id.* at 30, 38. See also Nicholas Quinn Rosenkranz, *Targeting the Constitution*, VOLOKH CONSPIRACY (Sep. 23, 2014), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/09/23/targeting-the-constitution/>.

⁵² See INAPPROPRIATE CRITERIA, *supra* note 45, at 6–10.

⁵³ Eddie Sotelo, *Interview with the President of the United States Barack Obama*, UNIVISION RADIO (Oct. 25, 2010), transcript available at <http://latimesblogs.latimes.com/washington/2010/10/transcript-of-president-barack-obama-with-univision.html>.

⁵⁴ President Barack Obama, Remarks by the President in State of the Union Address (Jan. 27, 2010), <http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address>.

⁵⁵ President Barack Obama, Remarks by the President and the Vice President at a DNC ‘Moving America Forward’ Rally in Philadelphia, Pennsylvania (Oct. 10, 2010), <http://www.whitehouse.gov/the-press-office/2010/10/10/remarks-president-and-vice-president-a-dnc-moving-america-forward-rally->

Conclusion

The President has a personal obligation to “take Care that the Laws be faithfully executed.”⁵⁶ The word “faithfully” is, perhaps, a broad grant of discretion, but it is also a real and important constraint. The President cannot suspend laws altogether. He cannot favor unenacted bills over duly enacted laws. And he cannot discriminate on the basis of politics in his execution of the laws. The President has crossed all three of these lines.

Again, I take no position on the ultimate question of whether Loretta Lynch should be confirmed. But I do hope that the Committee will thoroughly explore her views about the President’s obligation to “take Care that the Laws be faithfully executed.”⁵⁷ Above all, I hope that the nominee would, if necessary, tell the President when his proposed policies would run afoul of this solemn constitutional obligation.

⁵⁶ U.S. CONST. art. II, § 3.

⁵⁷ *Id.* (emphasis added).

Written Statement
Professor Jonathan Turley
J.B. & Maurice C. Shapiro Professor of Public Interest Law

Confirmation Hearing For Attorney General Nominee Loretta Lynch
 United States Senate Committee on the Judiciary
 United States Senate
 January 29, 2015

I. INTRODUCTION

It is a great honor to appear before this Committee at such a historic moment: the confirmation hearing of Loretta Lynch to serve as the 83rd Attorney General of the United States. I have great respect for Ms. Lynch and her extraordinary career in our profession. Ms. Lynch has had a long and distinguished record that certainly justifies her consideration for this high position. My interest today is not to discuss Ms. Lynch as much as the Department that she wishes to lead.

First, for the purposes of introduction, my name is Jonathan Turley and I hold the J.B. & Maurice C. Shapiro Professor of Public Interest Law at George Washington University. I write and teach (and litigate¹) in the area of constitutional law and legal theory, particularly on issues related to the separation of powers.² It is that focus that

¹ I am not appearing today in my capacity as lead counsel in *The House of Representative v. Burwell* challenging the President's unilateral changes to the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) ("ACA"). While I will be discussing some aspects of the President's changes in the ACA, the specific arguments in *Burwell* should be left to the Court to resolve and I have avoided engaging in public discussions of those specific claims in deference to the Court.

² I have been asked to include some of my prior relevant academic publications. The most relevant include Jonathan Turley, *A Fox In The Hedges: Vermeule's Optimizing Constitutionalism For A Suboptimal World*, 82 U. CHI. L. REV. (forthcoming 2015); Jonathan Turley, *Madisonian Tectonics: How Form Follows Function in Constitutional and Architectural Interpretation*, 83 GEO. WASH. L. REV. (forthcoming Feb. 2015); Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U. L. REV. 1523 (2013); Jonathan Turley, *Constitutional Adverse Possession: Recess Appointments and the Role of Historical Practice in Constitutional Interpretation*, 2013 WIS. L. REV. 965 (2013); Jonathan Turley, United States House of Representatives, Committee on the Judiciary, "Reckless Justice: Did the Saturday Night Raid of Congress Trample the Constitution," May 30, 2006; Jonathan Turley, *Paradise Lost: The Clinton Administration and the Erosion of Presidential Privilege*, 60 MD. L. REV. 205 (2000) (Symposium); Jonathan Turley, "From Pillar to Post": *The Prosecution of Sitting Presidents*, 37 AM. CRIM. L. REV. 1049 (2000); Jonathan Turley, *A Crisis of Faith: Congress and The Federal Tobacco Litigation*, 37 HARV. J. ON LEGIS. 433 (2000); Jonathan Turley, *Through a Looking Glass Darkly: National Security and Statutory Interpretation*, 53 SMU L. REV. 205 (2000) (Symposium); Jonathan Turley, *Senate Trials and Factional*

brings me to the Committee today to discuss the current constitutional crisis between the Executive and Legislative branches, a crisis in which the Justice Department has played a dominant (and, in my view, a highly deleterious) role. As my writings indicate, I have been concerned about the erosion of the lines of separation in our system (and specifically the erosion of legislative authority) for many years. However, this concern has grown to alarm in the last few years under President Obama, someone whom I voted for and someone with whom I agree on many policy issues. We are watching a fundamental change in our constitutional system in the rise of a dominant Chief Executive, a type “uber presidency” that has evaded the limitations imposed by the Framers in our system. It certainly did not begin with President Obama, and I was previously critical of the action of President George W. Bush with regards to the loss of legislative authority. However, it has reached a dangerous constitutional tipping point under the current Administration. That aggrandizement of authority could not have occurred without the active support and catalytic role of the United States Justice Department.

The Justice Department, as an institution, has poorly served not just institutional but constitutional interests in the last decade through its consistent effort to expand executive authority. These policies often appear inherently hostile to fundamental principles contained within our constitutional systems from the separation of powers³ to federalism,⁴ privacy,⁵ due process,⁶ press freedom,⁷ free speech,⁸ and international law.

Disputes: Impeachment as a Madisonian Device, 49 DUKE L.J. 1 (1999); Jonathan Turley, *The “Executive Function” Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999); Jonathan Turley, *Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President*, 67 GEO. WASH. L. REV. 735-790 (1999) (Symposium); Jonathan Turley, *Reflections on Murder, Misdemeanors, and Madison*, 28 HOFSTRA L. REV. 439 (1999) (Symposium); Jonathan Turley, *Dualistic Values in the Age of International Jurisprudence* 44 HASTINGS L.J. 145 (1992).

³ Jonathan Turley, *Restoring Balance Among The Branches In Washington* (With Sen. Ron Johnson), WASH. POST, June 27, 2014; Jonathan Turley, *The Rise of the Fourth Branch*, WASH. POST (Sunday), May 26, 2013; Jonathan Turley, *How Nixon Won Watergate*, USA TODAY, Mar. 26, 2013; Jonathan Turley, *Abuse Of Power: Obama’s Recess Appointments And The Constitution*, USA TODAY, Feb. 15, 2012.

⁴ Jonathan Turley, *Politics by Other Means: Obama’s War on Pot*, USA TODAY, July 8, 2014.

⁵ Jonathan Turley, *How Much Privacy Do You Expect? The Death of Privacy in America*, WASH. POST (Sunday), Nov. 13, 2011.

⁶ Jonathan Turley, *The Hit List: The Public Applauds As President Obama Kills Two Citizens As A Presidential Prerogative*, USA TODAY, Oct. 4, 2011

⁷ Jonathan Turley, *The Fourth Estate: Fifty Years After New York v. Sullivan*, USA TODAY, Mar. 13, 2014; Jonathan Turley, *Fire Eric Holder*, USA TODAY, May 29, 2013.

⁸ Jonathan Turley, *Just Say No To Blasphemy Laws*, USA TODAY, Oct. 19, 2009, at 11A; Jonathan Turley, *The Death of Free Speech*, WASH. POST (Sunday), Oct. 14, 2012.

The implications of this trend are obviously chilling. However, the most serious threat is found in the controversies over the inherent power and limitations applicable to the presidency. Some of these conflicts are the manifestation of policies that can be undone, but the more fundamental attacks on separation principles threaten to change the very system under which our rights (and our future) are guaranteed. In my view, Attorney General Holder often appeared untethered by the constitutional moorings in the Vesting Clauses. As a result, he steered the Justice Department far outside of the navigational beacons in Article II.⁹ The question is whether Ms. Lynch will (or can) tack back to calmer constitutional waters to the benefit of not only the integrity of our Constitution but the Department itself.

I believe that Ms. Lynch certainly has shown the personal strength and character to achieve such reforms, but the question remains of her commitment to do so. That is why confirmation hearings are so important during periods of constitutional crisis. A confirmation hearing is often misconstrued in the popular press as some type of ramped up “job interview.” However, confirmation hearings play an important role in the maintenance of the separation of powers. These hearings allow the Senate to measure not only the credentials of a nominee but also the fealty of the nominee to the fundamental principles governing this high office. We may all come from different political perspectives, but the Framers believed that we held a common article of faith in the structure and principles of our system. Indeed, some leaders like George Washington despised the very concept of political parties because he saw us as a nation united in a common constitutional bond. The question for a hearing of this kind is whether there remains a shared faith (and commitment) with a nominee, particularly with regard to the separation of powers. It is to that shared article of faith (and the threat posed by current Department policies) that I direct my comments today.

II. THE SHIFTING BALANCE OF POWER IN OUR TRIPARTITE SYSTEM

The Separation of Powers is the very core of our constitutional system and was designed not as a protection of the powers of the branches but a protection of liberty. Given my recent testimony¹⁰ and the specific question before this Committee, I will not

⁹ Jonathan Turley, *The Holder Years and the Perils of Politics Over Principle In Government*, USA TODAY, Sept. 26, 2014.

¹⁰ See, e.g., Jonathan, Turley, United States House of Representatives, “*Authorization to Initiate Litigation for Actions by the President Inconsistent with His Duties Under the Constitution of The United States*” Before the H. Comm. On Rules, 113th Cong., July 16, 2014; Jonathan Turley, United States House of Representatives, “*Enforcing the President’s Constitutional Duty to Faithfully Execute the Laws*” Before the H. Comm. on the Judiciary, 113th Cong., Feb. 26, 2014; Jonathan Turley, United States House of Representatives, *The President’s Constitutional Duty to Faithfully Execute the Laws Before the H. Comm. on the Judiciary*, 113th Cong., Dec. 2, 2013; Jonathan Turley, United States House of Representatives, Committee on the Judiciary, “*Executive Overreach: The President’s Unprecedented “Recess” Appointments*,” Feb. 15, 2012.

go into length about this history. However, the consistent element running throughout the constitutional debates and the language of the Constitution is a single and defining danger for the Framers: the aggrandizement or aggregation of power in any one branch or any one's hands. The Framers actively sought to deny the respective branches enough power to govern alone. Our government requires consent and compromise to function. It goes without saying that when we are politically divided as a nation, less tends to get done. However, such division is no license to "go it alone" as the President has suggested. You have only two choices in our system when facing political adversaries: you can either seek to convince them or to replace them. This is obviously frustrating for presidents (and their supporters) who want to see real changes and to transcend gridlock. However, there is nothing noble in circumventing the Constitution. The claim of any one person that they can "get the job done" unilaterally is the very Siren's Call that our Framers warned us to resist. It is certainly true that the Framers expected much from us, but no more than they demanded from themselves. Regrettably, we have failed that test in recent years as evidenced by the growing imbalance in our tripartite system of government.

The balance sought by the Framers has been lost in recent years precisely as the Framers had feared: with the rise of a dominant executive who promises to achieve all of the things that the constitutional process could not. Again, President Obama was not the first to openly circumvent Congress, but this concentration of power has accelerated under his Administration. While I happen to agree with the President in many of these areas, I believe that he has chosen unworthy means to achieve worthy ends. The effort to establish unilateral authority presents an existential threat to our system of government. Although the President has insisted that he is merely exercising executive discretion, any such discretion by definition can only occur within the scope of granted authority and only to the extent that it is not curtailed by the language of the Constitution. This includes his obligation to faithfully execute the law. U.S. Const. art. II, § 3, cl. 4. Some of the President's actions can be viewed as within permissible lines of discretion. However, many of his actions cannot and are violations of his oath of office. That oath is not merely an affirmative pledge to defend the Constitution but to yield to its limitations on his own authority. To put it simply, that was the deal struck on January 20, 2013.

A classic example of the conflict between the branches is found in the prisoner exchange arranged to secure the release of Army Sgt. Bowe Bergdahl. The deal struck with the Taliban in Afghanistan allowed for the release of five Taliban commanders. On its face, the transfer would have been viewed as controversial on the basis of a trade with a terroristic organization alone, not to mention the specific individuals involved: including one who was the head of the Taliban army, one who had direct ties to al-Qaeda training operations, and another who was implicated by the United Nations for killing thousands of Shiite Muslims.¹¹ The point of mentioning this controversy is not to resolve the merits of the trade for Bergdahl but to acknowledge that this was a trade that the White House knew would raise legitimate issues of U.S. policy and precedent as well as security. It was in that sense, squarely in line with the very reason that Congress passed (and President Obama signed into law) Section 1035 of the National Defense

¹¹ Kevin Sieff, *Freed Prisoners Were Battle-Hardened Taliban Commanders*, WASH. POST, May 31, 2014.

Authorization Act for Fiscal Year 2014. Section 1035 authorizes the Secretary of Defense to transfer or release individuals detained at Guantanamo Bay on the condition that the Secretary makes a specific determination and provides notification to “the appropriate committees of Congress of a determination . . . not later than 30 days before the transfer or release of the individual.”¹² This information-forcing provision required a “detailed statement of the basis for the transfer or release” and “[a]n explanation of why the transfer or release is in the national security interests of the United States.” *Id.* In addition to this provision, Section 8111 of the Department of Defense Appropriations Act, 2014 prohibits the use of “funds appropriated or otherwise made available” in the Department of Defense Appropriations Act, 2014, to transfer any individual detained at Guantanamo Bay to the custody or control of a foreign entity “except in accordance with section 1035 of the [FY 2014 NDAA].”¹³ That makes the spending of money for such a purpose a violation of the Antideficiency Act.¹⁴ When the Bergdahl swap occurred, I stated that the action clearly violated federal law.¹⁵ Obviously, the lack of notice to Congress violated Section 1035. Moreover, the roughly \$1 million reportedly spent to achieve this purpose was a violation of Section 8111 and by extension the Antideficiency Act. The Congressional Accountability Office reached the same conclusion on August 21, 2014.¹⁶

The position of the Obama Administration in violating the law showed a distinct lack of good faith or even a credible denial. While some argued that President Obama was now claiming that the law was never valid due to his inherent power as Commander in Chief, the defense of the swap came not from the Justice Department but from the National Security Council spokesperson, Caitlin Hayden. She explained that “[b]ecause such interference would significantly alter the balance between Congress and the President, and could even raise constitutional concerns, we believe it is fair to conclude that Congress did not intend that the Administration would be barred from taking the action it did in these circumstances.”¹⁷ The argument was rather bizarre on its face. Congress allowed for no waivers under the notice requirement—unlike other provisions under the 2014 National Defense Authorization Act.¹⁸ As both Democratic and

¹² National Defense Authorization Act for Fiscal Year 2014, H.R. 3304, 113th Cong. § 1035(d) (2013).

¹³ Pub. L. No. 113-76, § 8111.

¹⁴ 31 U.S.C. § 1341(a).

¹⁵ *Bergdahl Deal and Congress*, CNN, June 2, 2014 (interview with Professor Jonathan Turley).

¹⁶ Opinion, Congressional Accountability Office, *Department of Defense—Compliance with Statutory Notification Requirement*, August 21, 2014.

¹⁷ Statement of NSC spokesperson Caitlin Hayden, June 30, 2014 (available at <https://www.documentcloud.org/documents/1180482-nsc-statement-on-30-day-transfer-notice-law.html>)

¹⁸ Notably, Section 1035(a)(1) states “The Secretary of Defense is authorized to transfer or release any individual detained at Guantanamo . . . if the Secretary determines . . . the individual is no longer a threat to the national security of the United

Republican leaders indicated in the aftermath of the swap, such a reading of the law is facially absurd to the point of being insulting. Notably, even if the President were acting under his inherent authority, Section 1035 does not, itself, prevent the transfer of prisoners but rather requires disclosure of such transfers. Likewise, the very touchstone of congressional authority is the power of the purse. Section 8111 exercised that authority in barring the use of funds for a purpose deemed by Congress inimical to the national interest. The President's claim that he could simply disregard the law and then spend money expressly prohibited by federal law captures the new reality of our constitutional order. Admittedly, there are arguments that these laws did intrude upon Executive Authority and some academics consider the rise of a dominant president as not just an inevitable but also a positive development.¹⁹ However, President Obama was effectively claiming both the right to ignore a disclosure provision as well as an appropriations limitation. Such a position could effectively negate a host of environmental, labor, and other laws by the same logic. The signature of a president or enactment of a law could no longer be viewed as an assurance that federal law would be recognized or enforced.

The rise of a dominant presidency has had a profound impact on our system. However, there is another and equally transformative change occurring within the system in the emergence of an effective "Fourth Branch" of government in the array of federal agencies and departments. While often discussed as part of the rising power of the presidency, I view it as distinct because the federal agencies are showing not just increasing independence from Congress but also increasing independence from the White House. Many scholars have described with approval the emergence of the "Age of Regulation" in the system of federal agencies. As I have previously written, these agencies now exercise sweeping discretion and authority in the regulation of every aspect of American life. The sheer size of these agencies puts the vast majority of their activities under self-regulation rather than direct congressional oversight. The degree of the range of inherent authority now claimed by agencies is evident in the well-known controversies over health care and immigration. However, it is equally clear in a host of other controversies that have drawn less attention. For example, as an academic, I have watched a running battle between the Department of Education ("DOE") and universities over the due process protections afforded to students accused of sexual harassment or assault. There is a valid need for schools to explore the ongoing problem of sexual assault and harassment on our campuses. It is essential that universities maintain rules that encourage and protect those who come forward to reveal such abuse. Academics have struggled to balance the interests in such cases to protect the accuser while maintaining due process protections for the accused. More can certainly be done to

States." However, Defense Secretary Chuck Hagel made no such determination that Mohammad Fazl, Khairullah Khairkhwa, Mullah Norullah Noori, Mohammed Nabi, and Abdul Haq Wasiq were "no longer a threat to the national security of the United States." Indeed, such a determination would have been widely ridiculed given the history of these men.

¹⁹ See generally Jonathan Turley, *A Fox In The Hedges: Vermeule's Optimizing Constitutionalism For A Suboptimal World*, 82 U. CHI. L. REV. (forthcoming 2015) (a review and critique of the work of Harvard Professor Adrian Vermeule).

guarantee that cases are reported and fully acted upon by universities. However, universities have faced escalating threats from the DOE that they have to either strip protections from accused students or face the loss of millions in federal funds. Faculty at Harvard and other schools have denounced what they see as the abandonment of core due process protections under threats from the DOE.²⁰ The direct source for the confrontation is not a congressional enactment but the unilateral action of Department officials in demanding changes that many academics, including myself, view as deeply troubling. A couple of years ago, universities received a “Dear Colleague” letter from Russlynn Ali, then assistant secretary for civil rights at the Department of Education. She explained that the reduction of protections for students was essential for preserving education as “the great equalizer in America.” The Department made the choice simple: either strip students and faculty of basic due process protections or be declared discriminatory. The changes left many academics gasping.²¹ Some of these changes may have merit, but the point is that there has never been a debate over the right of the government to force such concessions from universities or what those concessions should be. Instead, there was an effective edict sent out to universities and colleges with a threat to be declared discriminatory institutions if they did not relent.

Some agencies have shown this legislative impulse not through the promulgation of new rules but through waivers of existing rules. Take the controversy over the Worker Adjustment and Retraining Notification (“WARN”) Act of 1988, which also illustrates the independence of the Fourth Branch. The WARN Act requires large employers to give 60-day advance notification to employees before termination.²² However, on July 30, 2012, the Department of Labor (“DOL”) issued a guidance letter that simply waived the statutory requirement and told employers that they did *not* need to issue notice to employees before making layoffs due to sequestration. These notices were scheduled to be issued just days before the 2012 elections and thus the waiver was denounced as a political maneuver. Whatever the reason, the agency took it upon itself to create an exemption. Not only was this a legislative act but the Office of Management and Budget informed government contractors that the government would compensate them for legal costs if sued for violating the Act. Likewise, the Department of Health and Human Services, under Secretary Kathleen Sebelius, created its own waiver to the Temporary Assistance for Needy Families (“TANF”). TANF imposed conditions on the receipt of welfare benefits under Section 407. While the law does not enumerate waivers, it

²⁰ See Nick Anderson, *Tally of Federal Probes of Colleges On Sexual Violence Grows 50 Percent Since May*, Wash. Post, Oct. 19, 2014; Juliet Eilperin, *Harvard Settles IX Case With Administration*, Wash. Post, Dec. 30, 2014 (quoting leading Harvard faculty like Professor Charles Ogletree Jr. in denouncing the changes as lacking “the most basic elements of fairness and due process.”).

²¹ For example, in the past, many schools have required significant evidence to find students or faculty guilty, often a “clear preponderance” or “clear and convincing evidence.” These standards require less than the criminal “beyond the reasonable doubt” standard but still a 75% or 80% certainty of guilt. The administration, however, demands that schools adopt the lowest evidentiary standard short of a presumption of guilt — “preponderance of the evidence,” just slightly above a 50-50 determination.

²² 20 U.S.C. § 2102(a)(2012).

expressly states that waivers granted under other sections of the law “shall not affect the applicability of section 407 to the State.” The Department simply ignored that clear language and crafted its own waiver in direct contradiction to the expressed intent of Congress.

The rise of both a dominant president and the Fourth Branch has shifted the center of gravity of our system—much at a cost to legislative power. That is a particularly dangerous change because it is in Congress that the disparate factional disputes are ideally transformed into majoritarian compromises. The pressure to compromise is only present in the system if the legislative system remains the sole course for bringing substantial change to federal laws and programs. If there is an alternative in unilateral executive action, the legislative process becomes purely optional and discretionary. The real meaning of a president claiming discretion to negate or change federal law is the discretion to use or ignore the legislative process. No actor in the Madisonian system is given such discretion. All three branches are meant to be locked in a type of constitutional synchronous orbit – held stable by their countervailing gravitational pull. If one of those bodies shifts, the stability of the system is lost.

III. THE JUSTICE DEPARTMENT AND THE EROSION OF LEGISLATIVE AUTHORITY

The Justice Department has played a key role in facilitating the erosion of legislative authority and the rise of executive power over the years. This is particularly the case under Attorney General Eric Holder, who can accurately be described as leaving one of the most damaging legacies in terms of separation principles. Indeed, General Holder has opposed some of the most fundamental exercises of congressional authority and litigated what are some of the most radical claims in federal court. While prior Attorneys General avoided court challenges in areas like executive powers and privilege, Holder has litigated with comparative abandon. In so doing, Holder has racked up serious losses in federal court in advancing extreme claims of unilateral executive power. The role of the Justice Department, however, goes beyond its direct confrontations with Congress. Many of the most controversial agency actions are filtered through the Justice Department in anticipation of litigation. The Justice Department works behind the scenes of many controversies in anticipating potential litigation and serving as a gatekeeper in the release of policies that could implicate constitutional powers.

The Department has advanced a comprehensive attack on separation principles that is unprecedented in its scope. While presidents such as Richard Nixon were known to advocate an “Imperial Presidency” model, no Administration has been nearly as active in the pursuit of such unilateral authority as the Obama Administration. The number of such disputes would be difficult to present in a testimonial format. However, they can be divided into two categories of separation violations: the obstruction of legislative authority and the usurpation of legislative authority.

1. Obstruction of Congressional Authority.

The most common separation conflicts that occur in our system can be described as interbranch “relational” conflicts—problems that arise from the necessary interactions

between the branches in carrying out their respective roles. The branches are expected to cooperate on a certain relational level in the sharing of information and the maintenance of federal programs. Three areas of conflicts are of particular note vis-à-vis the Justice Department, as discussed below.

Obstructing Oversight. Congress acts at the very core of its authority under our system of checks and balances through its oversight and investigatory committees.²³ While the Constitution does not expressly reference congressional investigations, it is well established that such authority is derived from the mandate of “all legislative powers herein granted” in Article I, section 1. These committees directly enforce the principles of separation of powers in identifying and addressing abuses by the other branches.²⁴ There is no question that such committees tend to be more aggressive when dealing with an Administration from the rivaling party. I hardly have to inform members of this body that that is the nature of politics. To the extent that rivaling parties become more aggressive, supporting parties become more passive in dealing with encroachments of presidents. In the end, complaints from an Administration over partisan designs are of little import. Congress has a right to investigate federal agencies in determining whether to exercise its legislative powers. This includes investigations into the obstruction of committees, which is an act of contempt both of Congress and ultimately of the Constitution.

Various oversight committees have objected to the withholding of documents and witnesses in various investigations related to areas ranging from the Internal Revenue Service’s alleged targeting of conservative organizations to the Bergdahl prisoner swap. However, the controversy that best captures the obstruction of Congress in recent years is the response of the Obama Administration in the Fast and Furious investigation. The reason that Fast and Furious is particularly illustrative is for a couple of salient factors. First, no one (not even General Holder) defends the Fast and Furious operation, which proved as lethal as it was moronic. It is a prototypical example of a program that is legitimately a focus of congressional oversight authority. A federal agency was responsible for facilitating the acquisition of powerful weapons by criminal gangs, including weapons later used to kill United States Border Patrol Agent Brian Terry in December 2010. Congress has investigated not only the “gunwalking” operation, but also what it saw as concealment and obstruction, by the Administration, in its efforts to investigate the operation. Second, Congress had ample reason to expand its investigation after the Justice Department sent a letter on February 4, 2011 stating categorically that no gunwalking had taken place.²⁵ It was not until December 2011 that Attorney General

²³ *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927) (“[T]he power of inquiry--with process to enforce it--is an essential and appropriate auxiliary to the legislative function.”).

²⁴ *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 505 (1975) (“The issuance of a subpoena pursuant to an authorized investigation is . . . an indispensable ingredient of lawmaking; without it our recognition that the act 'of authorizing' is protected would be meaningless.”)

²⁵ In the letter, Assistant Attorney General Ronald Weich wrote to Senator Grassley: “[T]he allegation . . . that [ATF] ‘sanctioned’ or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico — is false.

Holder informed Congress that it had been given false information and the letter was formally withdrawn. Congress responded by expanding the investigation into the false information given to it by the Executive Branch and the months of delay before Congress was informed of the misrepresentation of the facts underlying Fast and Furious. Finally, the position of the Justice Department on withholding documents has, in my view, been facially invalid and lacking in any credible good-faith interpretation of the executive privilege.

It is worth noting that the Administration in litigation over these claims presented the most extreme possible claims: not only refusing documents to investigatory committees in violation of legitimate legislative authority but contesting that a court can even rule on such a conflict in rejection of judicial authority.²⁶ As Judge Amy Berman Jackson wrote,

“In the Court's view, endorsing the proposition that the executive may assert an unreviewable right to withhold materials from the legislature would offend the Constitution more than undertaking to resolve the specific dispute that has been presented here. After all, the Constitution contemplates not only a separation, but a balance, of powers.”²⁷

Judge Jackson was, if anything, restrained in her reaction. The Administration in the case gave full voice to a vision of an imperial presidency where the Chief Executive was accountable to literally no one in such disputes. Indeed, in what is strikingly poor judgment in litigation management, the Justice Department has continued to make this extreme argument despite previously establishing precedent against itself in prior years.²⁸

After its admission of giving false information to Congress, the Justice Department's position has been conflicted and, in my view, incoherent from a constitutional standpoint.²⁹ After the House issued a subpoena for documents generated

ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.”

²⁶ *Comm. on Oversight & Gov't Reform v. Holder*, 979 F. Supp. 2d 1, 2-3 (D.D.C. 2013). The Department has adopted a position at odds with long-standing and some more recent precedent out of the D.C. Circuit. See *United States v. AT&T*, 551 F.2d 384, 390, 179 U.S. App. D.C. 198 (D.C. Cir. 1976) (“the mere fact that there is a conflict between the legislative and executive branches over a congressional subpoena does not preclude judicial resolution of the conflict.”); see also *Comm. on the Judiciary v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008).

²⁷ *Holder*, 979 F. Supp. 2d at 3.

²⁸ This includes litigation stemming from the Bush Administration. See *Comm. on the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 84 (D.D.C. 2008) (“[T]here can be no question that Congress has a right—derived from its Article I legislative function—to issue and enforce subpoenas, and a corresponding right to the information that is the subject of such subpoenas.”).

²⁹ The Administration did prevail in recently in the case of Electronic Frontier Foundation v. U.S. Department of Justice, where the D.C. Circuit ruled that the Administration could withhold an OLC Opinion that allegedly authorized the FBI to obtain telephone records from service providers under certain circumstances without a

before and after February 4, 2011 only a partial production of documents was made by the Justice Department. Rather than recognizing the added burden of disclosure following its admitted false statement to Congress, the Department refused to produce clearly relevant documents. Then, in a June 20, 2012 letter, Deputy Attorney General, James M. Cole, informed Congress that the President had asserted executive privilege over documents dated after February 4, 2011. The stated rationale was that their disclosure would reveal the agency's deliberative processes. That position was clearly overbroad and unsupportable given the scope of documents withheld. Giving false information to Congress runs to the core of oversight duties. Whatever the definition of deliberation may be for a court, lying to Congress and then knowingly withholding unprivileged documents is not within any reasonable definition of that term. Indeed, the Justice Department seemed hopelessly or intentionally unclear as to the scope of deliberative privilege, particularly in the distinction between this exception under FOIA and the common law versus its meaning under constitutional law.³⁰ Moreover, the invocation of executive privilege on the day of the hearing over the contempt of Congress deepened the confusion. In his June 20, 2012 letter, Deputy Attorney General Cole stated:

[T]he President, in light of the Committee's decision to hold the contempt vote, has asserted executive privilege over the relevant post-February 4 documents. The legal basis for the President's assertion of executive privilege is set forth in the enclosed letter to the President from the Attorney General. In brief, the compelled production to Congress of these internal Executive Branch documents generated in the course of the deliberative process concerning the Department's response to congressional oversight and related media inquiries would have significant, damaging consequences. As I explained at our meeting yesterday, it would inhibit the candor of such Executive Branch deliberations in the future and significantly impair the Executive Branch's ability to respond independently and effectively to congressional oversight. Such compelled disclosure would be inconsistent with the separation of powers established in the Constitution and would potentially create an imbalance in the relationship between these two co-equal branches of the Government.

I remain unclear about what the Justice Department believes is a more troubling "imbalance" than its denial to Congress of clearly material evidence needed for oversight.

"qualifying emergency." The D.C. Circuit ruled that, since the FBI did not adopt the recommendation, the opinion was not "working law" that would have to be turned over under the Freedom of Information Act. Yet, under FOIA, agencies must disclose their "working law," i.e. the "reasons which [supplied] the basis for an agency policy actually adopted." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 152-53 (1975). However, once again, this is not the same standard that applies to Congress. Moreover, even if the standard were the same, the fights with Congress involved documents that were withheld for months but later recognized to be unprivileged.

³⁰ 5 U.S.C. § 552(d) (FOIA "is not authority to withhold information from Congress"); *Murphy v. Dep't of the Army*, 613 F.2d 1151 (D.C. Cir. 1979) (holding that deliberative process and FOIA exemptions are inapplicable to Congress).

Congress was investigating the Department's false statement and withholding of clearly unprivileged documents from the oversight committee. The position of the Department was that it could unilaterally withhold material that might incriminate its own conduct and officers through a largely undefined claim of deliberative process.

This confusion deepened further when the Department later admitted that virtually all of the documents withheld for months were unprivileged. On November 15, 2013, the Attorney General stated in court filings that he was withholding documents responsive to the Holder Subpoena that "do not . . . contain material that would be considered deliberative under common law or statutory standards."³¹ Congress has a legitimate question of why the documents were withheld when they clearly were not privileged. The notion of a deliberative process privilege claim over non-deliberative documents was also made in the letter of General Holder to President Obama seeking a sweeping claim of executive privilege: "[b]ecause the documents at issue were generated in the course of the deliberative process concerning the Department's responses to congressional and related media inquiries into Fast and Furious, the need to maintain their confidentiality is heightened. Compelled disclosure of such material, *regardless of whether a given document contains deliberative content*, would raise 'significant separation of powers concerns.'"³²

In addition to a hopelessly confused notion of deliberative process, the Justice Department has failed to explain why it was clearly within the authority of Congress to demand production of documents to determine whether officials knew that the Department was giving false information to Congress in the February 4, 2011 letter but somehow Congress had no such authority to material showing whether and when officials know of the falsehood after February 4, 2011. Both sets of material concerns allegations of lying to Congress as well as the American people. Under the claims advanced by the White House, not only would courts be closed to challenges of presidents withholding evidence but also any material deemed in any way responsive to congressional inquiries would be per se privileged and capable of being withheld at the discretion of the Department.

Blocking Contempt Prosecution. One of the most troubling aspects of the Fast and Furious investigation was not just the withholding of non-privileged material but the later refusal of the Justice Department to submit the alleged violation to a grand jury—despite a historic vote of the House of Representatives finding General Holder in contempt. The decision to block any prosecution was a violation of a long-standing

³¹ Def.'s Mot. For Certification of This Ct.'s Sept. 30, 2013 Order for Interlocutory Appeal . . . at 8-9 (Nov. 15, 2013).

³² Letter of Attorney General Eric Holder To President Barack Obama, June 19, 2012 (citing *WHCO Documents Assertion*, 20 Op. O.L.C. at 3) (emphasis added) (available at http://www.justice.gov/sites/default/files/olc/opinions/2012/06/31/ag-ff-exec-priv_0.pdf) (citing *WHCO Documents Assertion*, 20 Op. O.L.C. at 3). The letter based this view on the claim that such disclosure to Congress would "significantly impair" its "ability to respond independently and effectively to matters under congressional review." *Id.*

agreement between the branches and represents a serious affront to the institutional authority of this body.

Congress has the inherent right to find officials in “inherent contempt” and actually hold trials to that effect.³³ Indeed, an inherent contempt proceeding was held as recently as 1934.³⁴ The Justice Department has long bristled at the notion of contempt proceedings handled by the legislative branch and supported the use of the criminal contempt process created in 1857 where a house approves a contempt citation and then either the Speaker of the House or Senate President certifies the citation to the United States Attorney for the District of Columbia under 2 U.S.C. § 194 (2000). This system was based on assurances from the Justice Department that it would be a neutral agent in advancing such claims. In recent years, however, the Justice Department has repeatedly blocked the submission of claims against members of the Administration and most recently the Attorney General himself.

Before addressing the most current case, it is important to return to the original power of Congress to handle such matters itself. While Congress has been put into the position of seeking approval of the Justice Department, even in the indictment of its own officers, the Supreme Court long recognized the inherent contempt power that could be exercised directly by Congress. For example, in *Anderson v. Dunn*,³⁵ the Court dismissed a civil action brought by a contumacious witness. The Court noted in a statement that now seems tragically prophetic that the denial of such inherent authority would lead:

to the total annihilation of the power of the House of Representatives to guard itself from contempts, and leaves it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may mediate against it. This result is fraught with too much absurdity not to bring into doubt the soundness of any argument from which it is derived. That a deliberate assembly, clothed with the majesty of the people, and charged with the care of all that is dear to them, composed of the most distinguished citizens, selected and drawn together from every corner of a great nation, whose deliberations are required by public opinion to be conducted under the eye of the public, and whose decisions must be clothed with all that sanctity which unlimited confidence in their wisdom and purity can inspire, that such an assembly should not possess the power to suppress rudeness, or repel insult, is a supposition too wild to be suggested.³⁶

While the courts would curtail inherent contempt authority to keep its use confined to

³³ This investigatory authority admittedly got off to a rocky start in *Kilbourn v. Thompson*, 103 U.S. 168, 189 (1880), where the Supreme Court questioned “the right of the House of Representatives to punish the citizen for a contempt of its authority or a breach of its privileges.” *Kilbourn*, however, involved a private business venture in which the federal government had invested. That case involved the imprisonment of a businessman, who was later released by a federal court. However, by 1927, in *McGrain v. Daugherty*, the inherent authority of Congress to pursue such investigations was strongly affirmed in its handling of the Teapot Dome scandal.

³⁴ MORTON ROSENBERG & TODD B. TATELMAN, CONG. RESEARCH SERV., RL34114, CONGRESS’S CONTEMPT POWER: A SKETCH 7 (2007).

³⁵ 19 U.S. (6 Wheat) 204 (1821).

³⁶ *Id.* at 228-29.

legislative matters,³⁷ it was affirmed as inherent to the legislative investigatory powers that must be exercised by Congress.

In one of the most recent confrontations, it was a Democratically controlled House of Representatives that sought prosecution for contempt of Bush Administration officials. Following the dismissal of nine United States Attorneys in 2006, both the House and Senate Judiciary Committees sought testimony and documents to address allegations that the dismissals were politically motivated. While the Bush White House offered interviews to be conducted behind closed doors for former White House Counsel Harriet Miers and other officials, it would not agree to transcribed interviews or the release of all of the documents sought by the committees. On June 13, 2007, the House Judiciary Committee issued two subpoenas. The first named Miers to both give testimony and produce documents.³⁸ The second was directed to White House Chief of Staff Joshua Bolten for the production of documents. President George W. Bush then asserted executive privilege to withhold both the testimony and the documents. That led on July 25, 2007, to the adoption of recommendation for contempt citations for Bolten and Miers by the full House Judiciary Committee and, on February 14, 2008, to a vote of contempt by the full House.³⁹ However, after certification by then Speaker Nancy Pelosi of the contempt vote to then United States Attorney for the District of Columbia Jeffrey Taylor, the Attorney General announced that (because the Administration was deemed correct in its use of Executive Privilege), “the [Justice] Department will not bring the congressional contempt citations before a grand jury or take any other action to prosecute Mr. Bolten or Ms. Miers.”⁴⁰ This led to the Miers litigation discussed above. However, the refusal to bring the claim to the grand jury captured the breakdown of the agreement between the branches over the use of statutory criminal contempt procedures. The Executive Branch has steadily expanded its view of the Executive Privilege and then cited its own view to bar the investigation of its own officers.

This same circular process was seen in the Fast and Furious controversy. The Obama Administration now claims that material may be withheld from Congress under a dubious deliberative process claim “regardless of whether a given document contains deliberative content” because release of such material would raise “significant separation of powers concerns.” So, the Administration (with the guidance of the Justice Department) first invokes overbroad executive privilege claims and then, when Congress seeks contempt prosecution, it cites its own overbroad executive privilege claims as the basis for refusing to give the matter to a grand jury. I have had criminal defense clients who would only envy such an ability to cite the basis for a criminal charge as the defense to a criminal charge. What is particularly breathtaking is that the Administration itself would confirm the non-privileged status of documents wrongly withheld from Congress but still insist that no grand jury could find such conduct the basis for a contempt charge.

The current status of contempt powers in Congress is clearly untenable. To put it

³⁷ See, e.g., *Marshall v. Gordon*, 243 U.S. 521, 536 (1917).

³⁸ *Miers*, 558 F. Supp. 2d at 61.

³⁹ 154 Cong. Rec. H962 (Feb. 14, 2008) (registering a final vote of 223 to 32).

⁴⁰ Letter from Attorney General Michael B. Mukasey to Representative Nancy Pelosi, Speaker of the House 2 (Feb. 29, 2008), online at <http://judiciary.house.gov/hearings/pdf/Mukasey080229.pdf> (visited Sept 1, 2009).

simply, the Justice Department has created a constructive immunity from congressional contempt through its expansive privilege claims. Indeed, it has taken roughly 200 years since *Anderson v. Dum*, but the Justice Department has achieved in statutory criminal contempt what the Court feared with regard to inherent contempt: “the total annihilation of the power of the House of Representatives to guard itself from contempts, and leave[] it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may mediate against it.”

Refusing To Defend Federal Law. Just as the Justice Department violated a basic commitment to be a neutral agent on contempt prosecutions, it violated a similar commitment to Congress when Attorney General Eric Holder announced that the Administration would abandon the defense of the Defense of Marriage Act (“DOMA”) signed into law by President Bill Clinton.⁴¹ Once again, I shared President Obama’s opposition to DOMA, and I have strongly supported same-sex marriage. However, the abandonment of the defense of DOMA produced uncertainty over the standing of anyone to defend the law and could well have resulted in the termination of the law by effective default. It did not serve the legal process to obscure the important legal issues in the recent Supreme Court cases with questions of standing and representation. While an Attorney General may have perfectly good reasons to oppose a law, the solution is not to abandon the law and leave Congress without a voice in the courts. DOMA was still a law passed by Congress and many, including some on the Court, believed it to be constitutional. As with the contempt controversy, one cannot assert the near absolute right to represent the Legislative Branch and then refuse to defend its laws. Holder should have appointed outside counsel to defend the law in the name of the government if he found the task to be ethically barred. We should all want a full and fair consideration of those arguments without artificial limitations presented by litigation abandonment. Ultimately, the maneuver almost led the striking down of the law without a resolution of the merits in *United States v. Windsor*.⁴² The Court was divided on the standing of members to defend DOMA with both Chief Justice Roberts and Associate Justice Scalia rejecting standing arguments by the House of Representatives’ Bipartisan Legal Advisory Group (“BLAG”). The majority, however, found sufficient Article III standing despite the fact that the Obama Administration abandoned the defense of the federal law. It found prudential reasons for accepting the case to guarantee adversarial process and other interests.⁴³ It would have been deeply troubling to see a major piece of federal law killed

⁴¹ See Press Release, U.S. Dep’t of Justice, Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011), <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html> (notifying Congress of President’s determination that statute was unconstitutional and declining to defend the statute).

⁴² 133 S. Ct. 2675 (2013).

⁴³ Justice Kennedy specifically noted “the prudential problems inherent in the Executive’s unusual position” and the risk that the abandonment of the defense of the law would deny the Court of a “real, earnest and vital controversy.” *Windsor*, 133 S. Ct. at 2687. The Court held that “prudential considerations demand that the Court insist upon ‘that concrete adverseness which sharpens the presentation of issues upon which the court

by default because the Attorney General simply did not send anyone to argue its merits. Yet, after the decision (and the criticism of some members of the Court), Attorney General Eric Holder encouraged state Attorneys General to follow this same course in abandoning defense of their own state laws.⁴⁴ Given the division over standing in *Windsor* and the denial of standing in its sister case of *Hollingsworth*,⁴⁵ General Holder's advice is in my view inimical to the legal process. There is a difference between refusing to personally defend a law and leaving a law undefended. The interests of justice demand that courts are given an adversarial presentation of arguments—a requirement that is openly obstructed when the government withdraws from representation and fails to appoint individuals to defend a law.

In fairness to the Obama Administration, the non-defense of a statute viewed unconstitutional has been a long and divisive issue in academia. The Office of Legal Counsel has long maintained that there are rare circumstances where a President can legitimately decline to enforce or defend a law. However, these have been described as cases where a law is “clearly unconstitutional.”⁴⁶ While I viewed the law as unconstitutional, there was a host of cases supporting the law and there were deep divisions over the possible basis for striking down the law. Indeed, the President himself had spent years in office equivocating over same-sex marriage and his Administration spent years defending DOMA and related laws like Don't Ask, Don't Tell in court. In my view, the obligation of the Justice Department ran to Congress to fulfill its commitment that, as the nation's litigator, it would defend federal laws. Otherwise, non-defense can become an alternative means to negate federal laws by withdrawing anyone with clear standing to defend them.

2. Usurpation of Legislation Authority.

Where the controversies over subpoenas and contempt involved the resistance of legislative authority to investigate the Executive Branch, other controversies involve the intrusion into legislative authority. Once again, the Justice Department has played a critical role in such expansion in areas ranging from online gambling⁴⁷ to educational waivers to immigration deportations to health care decisions. I would like to briefly address two examples of how the Department has advocated the usurpation of legislative

so largely depends for illumination of difficult constitutional questions.” *Id.* (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

⁴⁴ Evan Perez, *Eric Holder Becomes An Activist Attorney General*, CNN, Feb. 25, 2014.

⁴⁵ *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013).

⁴⁶ Recommendation that the Dep't of Justice Not Defend the Constitutionality of Certain Provisions of the Bankr. Amendments and Fed. Judgeship Act of 1984, 8 Op. O.L.C. 183, 194 (1984) (noting that “[i]t is generally inconsistent with the Executive's duty, and contrary to the allocation of legislative power to Congress, for the Executive to take actions that have the practical effect of nullifying an Act of Congress.”).

⁴⁷ Leah McGrath Goodman, *How Washington Opened The Floodgate on Online Poker*, Newsweek, August 14, 2014 (discussing role of the OLC in reversing long-standing federal interpretation barring online gambling).

authority in the areas of recess appointments and health care.

Recess appointments. The recent controversy over recess appointments highlights not only the extreme interpretations advanced by the Obama Administration over executive power but the ill-conceived litigation strategy of the Justice Department.⁴⁸ The four appointments made by President Obama in January 2012 were done in open circumvention of Congress and open violation of the Constitution. President Obama had previously submitted the nomination of Richard Cordray to serve as the first Director of the Consumer Financial Protection Bureau. Cordray himself was not really the issue. As discussed below, confirmation hearings are often about the department rather than the nominee. The nomination was blocked by forty-five Senators in a filibuster over a disagreement with the President on the accountability and funding of the bureau.⁴⁹ I testified on those appointments and advised Congress that I viewed them as flagrant violations of Article I and Article II.⁵⁰ The Justice Department (in an Office of Legal Counsel opinion) not only supported the appointments as constitutional but also then litigated the case in establishing negative rulings in both the United States Court of Appeals for the District of Columbia and the United States Supreme Court in *National Labor Relations Board v. Canning*.⁵¹ The D.C. Circuit⁵² held that the President's interpretation of recess appointments violated the separation of powers and that "[t]o adopt the [government's] preferred intrasession interpretation of 'the recess' would wholly defeat the purpose of the Framers in the careful separation of powers structure . . . [a]llowing the President to define the scope of his own appointments power would eviscerate the Constitution's separation of powers."⁵³ The Supreme Court reached the same result by unanimous decision, though it split 5-4 on the rationale.

The decision to litigate *Canning* was particularly interesting given the refusal to defend DOMA. While DOMA had many good-faith arguments in favor of constitutionality and precedent supporting the law, the Obama Administration abandoned the case on appeal. That case could have easily gone either way based on the prior precedent and was not "clearly unconstitutional" to warrant abandonment regardless of the President's view of the merits. On the other hand, there appeared little debate in the Administration to litigate *Canning* despite the prior negative ruling and the far stronger

⁴⁸ See generally Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U. L. REV. 1523 (2013); Jonathan Turley, *Constitutional Adverse Possession: Recess Appointments and the Role of Historical Practice in Constitutional Interpretation*, 2013 WIS. L. REV. 965 (2013).

⁴⁹ While Cordray became the focus of the controversy, Obama also appointed three individuals to the National Labor Relations Board.

⁵⁰ Jonathan Turley, United States House of Representatives, *The President's Constitutional Duty to Faithfully Execute the Laws Before the H. Comm. on the Judiciary*, 113th Cong., December 2, 2013; Jonathan Turley, United States House of Representatives, Committee on the Judiciary, "Executive Overreach: The President's Unprecedented "Recess" Appointments," February 15, 2012.

⁵¹ 573 U.S. ____ (2014).

⁵² *Canning v. NLRB*, 705 F.3d 490, 502 (D.C. Cir. 2013).

⁵³ *Id.* at 503–04.

indicators of unconstitutionality in the President's action. There remains an uncertain line drawn by the Obama Administration of when it will litigate a constitutional position (in its own assertion of authority) and when it will abandon such a claim (in legislation passed by Congress).

The actions taken on recess appointments, in my view, represented a flagrant and premeditated violation of the Constitution. The partisan divide over the case was baffling for a Madisonian scholar. Congress' authority over this critical control on agencies was directly contested by the intrasession appointments. Yet, in the prior hearings, members seemed to desperately argue against the appeal on the merits and, in so doing, seemed to argue for their own institutional obsolescence. The presumed fail safe protections in the system seemed to fail in this case—all, that is, but one. Congress waffled in responding to an attack on its authority while the Justice Department failed to show independent, apolitical judgment in reviewing the matter. Ultimately, the independent judiciary maintained the power of Congress over confirmations, even though the Obama Administration again argued that no court could review its actions in the area as a matter of standing.

Health Care. Another emblematic area of usurpation is found in health care changes. Once again, I support national health care and the goals of President Obama. There have been dozens of changes in deadlines and other provisions under the ACA. Again, I happen to agree with some of these changes but that does not change the fact that they are in direct conflict with legislative text. For example, Congress originally mandated that non-compliant policies could not be sold after October 1, 2014. That provision was unpopular with certain groups and the Obama Administration unilaterally ordered a two-year extension that allowed insurance companies to sell non-compliant, and thus unlawful, policies until October 2016.⁵⁴ Another such change occurred with regard to the deadline for private employers with more than 50 full-time employees.⁵⁵ This deadline was viewed by some as a critical element of the law and was arrived at after considerable debate. The Act expressly states that these provisions would become active on January 1, 2014.⁵⁶ However, the Administration moved unilaterally to set its own deadline and thereby suspend annual penalties that would have brought in huge revenues in sanctions to the extent that businesses did not comply.⁵⁷ It simply stated that the employer mandate and its reporting obligation “will not apply for 2014.”⁵⁸ That

⁵⁴ Centers for Medicare & Medicaid Services, “Extended Transition to Affordable Care Act-Compliant Policies, Mar. 5, 2104, *available at* <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf>.

⁵⁵ 26 U.S.C. §4980H (c)(2)(A).

⁵⁶ *See* ACA § 1502 (e).

⁵⁷ This sweeping change was announced on a Treasury Department blog under a title that must have been jarring for many in Congress: “Continuing to Implement the ACA in a Careful, Thoughtful Manner.”

⁵⁸ U.S. Dept. of Treasury, “Continuing to Implement the ACA in a Careful, Thoughtful Manner,” July 2, 2013, *available at* <http://www.treasury.gov/connect/blog/pages/continuing-to-implement-the-aca-in-a-careful-thoughtful-manner.aspx>. The Administration subsequently issued official

change cost the government an estimated \$10 billion in annual revenue.⁵⁹ Then on February 10, 2014, the Administration again altered the statute by exempting employers with between fifty and ninety-nine full-time employees from all aspects of the employee-coverage requirements until 2016.⁶⁰

In the resulting litigation, the Justice Department has advanced the same extreme interpretations of executive authority in defending the changes to the ACA. I would like to focus on one such controversy that is currently before the United States Supreme Court in *King v. Burwell* and before the D.C. Circuit en banc in *Halbig v. Burwell*.⁶¹

The focus of these cases is the interpretation of portion of the ACA governing state and federal exchanges. Congress established the authority of states to create their own exchanges under Section 1311. If states failed to do so, federal exchanges could be established under Section 1321 of the Act. However, in Section 1401, Congress established Section 36B of the Internal Revenue Code to authorize tax credits to help qualifying individuals purchase health insurance. In Section 1401 expressly links tax credits to qualifying insurance plans purchased “through an Exchange *established by the State* under 1311.” The language that the qualifying exchange is “established by the State” seems quite clear, but the Administration faced a serious threat to the viability of the Act when thirty-four states opted not to create exchanges. The Administration responded with an interpretation that mandates that any exchange—state or federal—would now be a basis for tax credits. In adopting this statutory construction, the Administration committed potentially billions in tax credits that were not approved by Congress. The size of this financial commitment without congressional approval also strikes at the essence of congressional control over appropriation and budgetary matters.

The Fourth Circuit and the D.C. Circuit ultimately split over this issue, though I believe that the D.C. Circuit was more faithful to the Constitution in its rejection of the Administration’s claims.⁶² Regardless of where the Supreme Court emerges on the issue, the constructive amendment to the ACA presents a serious challenge to legislative authority when it strikes a balance of interests in such provisions. The unilateral change also shows the ascendancy of the Fourth Branch described above. The substantial

guidance in IRS Notice 2013-45, available at <http://www.irs.gov/pub/irs-drop/n-13-45.PDF>.

⁵⁹ See Congressional Budget Office, “Analysis of the Administration’s Announced Delay of Certain Requirements Under the Affordable Care Act,” available at <http://www.cbo.gov/publication/44465>.

⁶⁰ U.S. Dept. of Treasury, “Continuing to Implement the ACA in a Careful, Thoughtful Manner,” July 2, 2013, available at <http://www.treasury.gov/connect/blog/pages/continuing-to-implement-the-aca-in-a-careful-thoughtful-manner.aspx>. The Administration subsequently issued official guidance in IRS Notice 2013-45, available at <http://www.irs.gov/pub/irs-drop/n-13-45.PDF>.

⁶¹ See Jonathan Turley, *Goodbye Hobby Lobby, Hello Halbig: Get Ready For An Even Greater Threat To Obamacare*, L.A. TIMES, July 1, 2014.

⁶² As I have written, I consider both the Fourth and D.C. Circuits to present compelling arguments even if I disagree with the result in *King*. See Jonathan Turley, *Red and Blue: Attacks on Judges In Health Care Rulings Are Unjustified*, USA TODAY, July 30, 2014.

alterations ordered in this and other provisions shows vividly how legislation is being treated as merely a starting point for agencies in our new Administrative State. It is not enough for presidents to defend such actions as improving a law or acting in the absence of congressional changes. Opposition in Congress, even gridlock, is no excuse to dictate the outcome unilaterally on one's own terms. As important as national health care is, the integrity of our system demands an equal Legislative Branch and the compulsory participation in the carefully constructed legislative process.

IV. THE ROLE OF CONFIRMATION HEARINGS IN RESOLVING INTERBRANCH CONFLICTS

While the Framers were familiar with British ministries' and colonies' charter governments,⁶³ the new Administrative State is far beyond what any Framers could have imagined within the federal system.⁶⁴ However, the Framers understood the concentration of power and fought to resist it to give each branch the interest and ability to protect their own constitutional powers. In *Federalist No. 51*, James Madison explained the essence of the separation of powers—and the expected defense of each branch of its constitutional prerogatives and privileges:

But the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition.⁶⁵

The separation of powers was an imperative in its own right not because of an inherent desire for divided government, but because it was viewed as a necessary safeguard to the natural encroachment and corruption of power. In recent years, Congress has become relatively passive in exercising the full panoply of powers to resist executive encroachment. The current fight over the obstruction and usurpation of legislative authority has been building for years. As my friend, Walter Dellinger, noted in prior testimony during the Bush Administration, the encroachment of executive power has become a threat to the separation of powers and a direct challenge to the obligation of presidents to faithfully execute federal

⁶³ Indeed, much of the separation of powers embodied in the Constitution was viewed as an implied rejection of the British model. See, e.g., William S. Livingston, *Britain and America: The Institutionalization of Accountability*, 38 J. POL. 879, 880 (1976) (“[A] number of quite fundamental institutions in the American system marked a direct reaction against things British, and were adopted by the Americans as a means of avoiding problems which they perceived as prompted by British error.”).

⁶⁴ See *City of Arlington v. FCC*, 133 S. Ct. 1863, 1878 (2013)(C.J., Roberts, dissenting) (“The Framers could hardly have envisioned today’s ‘vast and varied federal bureaucracy’ and the authority administrative agencies now hold over our economic, social, and political activities.”).

⁶⁵ THE FEDERALIST NO. 51, at 257 (James Madison) (Lawrence Goldman ed., 2008).

laws.⁶⁶ Professor Dellinger called upon “the next President [to] commit to respecting important structural safeguards that check against presidential aggrandizement.”⁶⁷ That has regrettably not happened. Instead Congress has faced an attack on its authority that is unprecedented in scope in the context of modern presidencies.

Confirmation hearings take on added importance during such constitutional crises. Indeed, confirmation hearings have grown in importance as congressional authority has declined vis-à-vis federal agencies. As I have noted in some of my recent scholarship, confirmation hearings have developed into an important check on agency abuse and now perform a unique dialogic role between the political branches.⁶⁸ While Congress holds the power of the purse, this power is far more limited than academic work would often suggest. The threat to cut off funding to agencies that administer critical social programs or perform critical social functions is considered by many to be the ultimate “nuclear option.” The shared appointment power, by contrast, offers Congress a less drastic method to not only raise conflicts but also force answers from agencies. It is becoming more common to see agencies stonewalling Congress or failing to fully answer committees on matters of public interest.

Confirmation hearings necessarily raise not just the credentials but also the policies to be pursued by a nominee, particularly when there is an impasse with Congress and the agency. Indeed, such hearings often force commitments for changes or policies to assure the Senate that a candidate is prepared to respect the basic conditions of interbranch relations and privileges under the Constitution. Recently, I read with some interest the statement of former Solicitor General Charles Fried who noted that he was expressly asked for assurances on his future actions in offices and felt duty bound to fulfill those promises.⁶⁹ Confirmation hearings allow Senators to confirm new

⁶⁶ *Restoring the Rule of Law Before the S. Comm. on the Judiciary*, Sept. 16, 2008 (Joint Statement of David Barron and Walter Dellinger) (criticizing President Bush for violating the Separation of Powers and ignoring congressional authority) (“Under this Administration, lawyers in the Executive Branch have wildly misinterpreted what the Constitution says about the extent of presidential authority, and as a result the President has erroneously claimed the authority to disregard laws that he is obligated to follow.”).

⁶⁷ *Id.* This advice also included a well-deserved criticism of the Office of Legal Counsel for “the failure of the OLC in the current Administration to live up to its proper role – including its willingness to operate as an advocate and to offer thinly plausible, or even implausible, legal justifications for the President’s policy goals.” *Id.* at 8. That advice was also ignored.

⁶⁸ For a conflicting view, see Joan Flynn, *A Quiet Revolution at the Labor Board: The Transformation of the NLRB, 1935-2000*, 61 OHIO ST. L.J. 1361, 1437 (2000) (arguing that the shift in the balance of power in the appointments process in favor of the Senate leads to more extreme and more partisan nominees).

⁶⁹ Fried was specifically referring to one of the areas of current conflict with the Justice Department in the failure to defend a federal law. See Charles Fried, *The Solicitor General’s Office, Tradition, and Conviction*, 81 FORDHAM L. REV. 549, 550 (2012) (“Every Solicitor General . . . goes through a little dance [during] his or her confirmation hearings. . . . ‘[I]f confirmed, [will you] defend the constitutionality of acts of Congress?’

commitments and direction for departments. In so doing, past conflicts can be reduced or, in the very least, directly addressed between the branches.

Consider again the controversy over the Consumer Financial Protection Bureau (CFPB). While Congress notably threatened to withhold funds for the CFPB, it first used its confirmation authority to try to force the President to the negotiation table on the structure and function of the Bureau.⁷⁰ The Senate's decision to block Cordray's confirmation was tied directly to its opposition to the Bureau he had been appointed to lead. Congress was faced with an agency that it viewed as unresponsive to prior congressional concerns over unchecked administrative power and control of the appropriation of funds. With the reduction of congressional control over federal regulatory decision-making, the Congress turned to the confirmation process as a vehicle to influence agency policy and operations. The Dodd-Frank Act created sweeping authority for the "orderly liquidation" of financial institutions.⁷¹ Not only were Republicans concerned about undefined core terms like "financial stability," but also about the abridgment of access to the courts and the ability to appeal agency decisions.⁷² Of course, these terms were approved by Congress and thus previously subject to the legislative process. But the Act shifted an extraordinary degree of rulemaking authority to the agencies, an estimated 243 new rulemakings to be promulgated by eleven different agencies affecting trillions of dollars, with little real involvement of Congress. The Cordray nomination provided a vehicle for forcing the White House to come to compromise with the legislature on this agency's new powers and the rules it could be expected to promulgate. Once Cordray had been confirmed, the ability of the Senate to exact such concessions would be greatly reduced.

Given the discretion afforded agencies (which are protected in the judicial system under such decisions as *Chevron*, *Dominion*, and *Lane*),⁷³ the confirmation of agency and

'Yes, Mr. Chairman, . . . unless no colorable argument can be made in their defense or unless they trench on the prerogatives of the executive branch.'").

⁷⁰ In 2013, the Senate confirmed Cordray as part of a deal to avoid the "nuclear option." Alexander Bolton, *Deal: Nuclear Option Averted As GOP Blinks*, Hill, July 17, 2013 ("By agreeing to advance his nomination, Republicans basically threw in the towel on their demands to reform the Bureau").

⁷¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (The purpose of the Act is "to provide for orderly liquidation of any such company under title II").

⁷² Todd Zywicki, *The Consumer Financial Protection Bureau: Savior or Menace*, 81 GEO. WASH. L. REV. 856, 859-65 (2013).

⁷³ *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984) (holding that "considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer"); *Dominion Energy Brayton Point v. Johnson*, 443 F.3d 12, 16 (1st Cir. 2006) (holding that an "agency's reasonable interpretation [of the law] be accorded deference if there is any ambiguity as to [Congressional] intent" (quoting *Citizens Awareness Network, Inc. v. United States*, 391 F.3d 338, 348 n.4 (1st Cir. 2004)); *Lane v. U.S. Postal Serv.*, 964 F. Supp. 1435, 1437 (D. Nev. 1996) (stating that "where Congress has delegated a policy decision to an

sub-agency heads is one of the most direct ways for Congress to try to influence or curtail decisions of the government. Congress' direct hold over agency and sub-agency heads is limited to the critical decision of confirmation. While Congress may engage in informal consultation, it does not have a formal voice in the selection of a nominee and retention of a confirmed official. As Alexander Hamilton noted in the *Federalist Papers*, "[t]here will, of course, be no exertion of *choice* on the part of the Senate. . . . [T]hey can only ratify or reject the choice [the President] may have made."⁷⁴ Obviously, Senators are free to vote on any basis for the confirmation or the rejection of a nominee. They can vote for good reason, bad reason, or no reason at all. However, Senators in the past have demanded assurances on how a Department will perform its duties going forward as a condition for confirmation. For example, the past obstruction of oversight committees and failure to defend federal laws can be viewed as fundamental breaches in interbranch relations that demand resolution before confirmation.

More than any other department, the Justice Department has played a key role in facilitating the attack on congressional authority. The confirmation of an Attorney General necessarily raises the question of not just whether she will lead a federal department but what department she will lead. The Justice Department was once viewed as an apolitical institution that rose above political infighting and maintained a principled approach to the interpretation of the Constitution, particularly in deference to the separation of powers. In recent years, it has become both overly antagonistic and litigious with regard to the exercise of well-established legislative powers.

An example of this change can be found in the Office of Legal Counsel. The OLC long held a revered position within the Justice Department for its objective and apolitical analysis. Unlike other offices within the Department, which advocate the position of the Administration, the OLC was viewed as the voice for constitutional values and the rule of law. However, in recent years, the OLC has issued opinions that are highly troubling in their conclusory and, frankly, shallow analysis. I raised this concern in the hearing on the recess appointment controversy. I have read compelling arguments on both sides of this debate from academics for whom I have great respect. Accordingly, I was not necessarily expecting agreement from the OLC on the issue. However, I was expecting a fair and frank discussion of the constitutional implications of intrasession appointments. Instead, the January 6, 2012 opinion of Assistant Attorney General Virginia Seitz read more like an advocacy brief than detached analysis. Seitz reached an extreme position on the scope of recess appointment powers resolving every interpretative question in favor of the President. For example, by categorically rejecting the notion of pro forma sessions as avoiding a recess, the Seitz opinion insisted that it did not have to address how long or how short a recess can be to justify a recess appointment.⁷⁵ It essentially solved the problem by changing the question. By

agency, separation of powers concerns make it inappropriate for a court to substitute its judgment for that of the agency").

⁷⁴ THE FEDERALIST NO. 66, at 328 (Alexander Hamilton) (Lawrence Goldman ed., 2008) (emphasis in original).

⁷⁵ Op. O.L.C. at 9 n.13. ("Because we conclude that pro forma sessions do not have this effect [that the Senate is unavailable to fulfill its advice-and-consent role], we need not decide whether the President could make a recess appointment during a three-day

effectively saying that the President decides what is and what is not a session for the purposes of the Clause, it concluded that these are not sessions to the satisfaction of the President.⁷⁶ Ironically, while the OLC insists that the President may define terms that completely negate congressional powers, it also insists that Congress cannot define such basic terms as whether it is in session if a President disagrees. The previous cases deferring to congressional definitions on what constitutes a session reflect the fact that it is the Congress that determines when it will meet and conduct business. The OLC simply brushed aside the fact that courts routinely defer to Congress on how it defines and conducts its business. Article I expressly leaves it to members to “determine the Rules of its Proceedings.”⁷⁷ Thus, the Supreme Court has held “all matters of method [of proceeding] are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just.”⁷⁸ The OLC instead suggested that the only way for Congress to protect its constitutional right of advice and consent would be for “[t]he Senate [to] remove the basis for the President’s exercise of his recess appointment authority by remaining continuously in session and being available to receive and act on nominations.”⁷⁹ The OLC notably never tries to justify such an extreme position in terms of the original or logical purpose of the Clause in the overall context of the appointment process. Nor does it explain why an intrasession recess is not a transparently artificial excuse when Congress is in session and only a matter of days away from advice and consent—and conferral had already been made in the earlier session with unsuccessful results. Even the broader interpretations of recent administrations have acknowledged that the length of a recess can be determinative, including prior conflicting opinions of Attorneys General that were barely acknowledged by the OLC.⁸⁰ In advancing this consistently broad interpretation of the Clause, the OLC opinion relegates to footnotes or dismisses outright the opposing views of past Attorneys General.

The great irony is that this President would have been better served by the OLC exercising greater detachment from political controversies like that over recess

intrasession recess. This Office has not formally concluded that there is a lower limit to the duration of a recess within which the President can make a recess appointment.”).

⁷⁶ *But see* Letter from Elena Kagan, Solicitor General, Office of the Solicitor General, to William K. Suter, Clerk, Supreme Court of the United States 3 (Apr. 26, 2010); *New Process Steel, L.P. v. NLRB*, 560 U.S. ___, 130 S.Ct. 2635 (2010) (“[T]he Senate may act to foreclose [recess appointments] by declining to recess for more than two or three days at a time over a lengthy period.”).

⁷⁷ U.S. CONST. art. I, § 5, cl. 2.

⁷⁸ *United States v. Ballin*, 144 U.S. 1, 5 (1892) (“It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.”).

⁷⁹ Op. O.L.C. at 1.

⁸⁰ Memorandum of Jack L. Goldsmith III to Alberto R. Gonzales, Counsel to the President, Re: Recess Appointments in the Current Recess of the Senate at 1 (Feb. 20, 2004) (noting that “a recess during a session of the Senate, *at least if it is sufficient length*, can be a ‘Recess’ within the meaning of the Recess Appointments Clause”) (emphasis added).

appointments. A more balance and cautionary analysis might have avoided years of litigation, confusion over the legitimacy of prior CFPB decisions (by recess appointees), and ultimately a unanimous vote of the Supreme Court against the Administration.

V. CONCLUSION

The Justice Department is more than some rogue agency at odds with congressional oversight. It is the very architect of the effort to expand executive power beyond the limits imposed by the Framers. There seems a culture at the Justice Department to instinctively resist every assertion of congressional authority or any limitation on presidential power. That is not the function of the Department. Lawyers are supposed to zealously defend their clients, but the real client of the Justice Department is not the President and certainly not itself. It is the American people. They are being poorly represented in case after case where the Justice Department seeks to block judicial review and to obstruct legislative authority. Underlying this effort is a distorted view of the Department's role in our government and an even more distorted view of our government itself. To paraphrase George Orwell's "*Animal Farm*," the position of the Justice Department appears to be "All branches are equal, but some branches are more equal than others."

It is difficult to evaluate a nominee without understanding her commitment to change the course of the Department in these confrontations with Congress. Whether it is the overboard claims of executive privilege or the unilateral authority of the President to negate statutory language or the non-defense of federal laws, there remains a fundamental disagreement over the obligations and function of this Department within our system. In exercising its power to confirm a nominee, the Senate has an undeniable interest in confirming that a nominee will not continue policies inimical to the balance of power in our system.

As I have stated, I have no reason to doubt the integrity and intentions of Ms. Lynch, who has reached this point in her career by displaying obvious leadership and strength of character. It is my sincerest hope that she will use this historic opportunity to open a new chapter in relations between the branches and to restore some of the luster to this proud Department. The Justice Department should be the embodiment of the common article of faith shared by all Americans in a system of separate and limited powers. I can only imagine the intense pride of not just Ms. Lynch but her family when she takes the oath to serve as the highest law enforcement figure in the nation. When that moment comes, and I hope that it does, there should be a clear understanding on the part of both Congress and the nominee as to what she is swearing "true faith and allegiance" as the 83rd Attorney General of the United States of America.

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**Opening Statement of Senator Dianne Feinstein
Confirmation Hearing for Loretta Lynch to be Attorney
General of the United States**

January 28, 2015

Thank you very much, Chairman Grassley.

I will be brief, but I do want to say that Loretta Lynch's nomination has my full support, and that I believe she is well qualified to serve as the next Attorney General.

I have served on this committee for over 22 years. During that time, I have had the opportunity to take part in six other sets of confirmation hearings for the position of Attorney General, which is our nation's chief law enforcement officer. (Baird, Reno, Ashcroft, Gonzales, Mukasey, Holder)

I have watched the Justice Department operate – sometimes well, sometimes not as well – under different Attorneys General. I believe the Justice Department is, and should continue to be, the crown jewel of law enforcement in this country and around the world.

I also believe I know the type of person who makes an outstanding Attorney General.

That person must have the leadership capacity, experience, and tenacity to really go after the major law enforcement and national security problems facing this country. The person must also be fair, balanced, and independent in her approach.

I met with Loretta Lynch, and I was very impressed. I have reviewed her record, which is stellar and shows she is a firm, but fair, federal prosecutor.

Having led a very large and important U.S. Attorney's Office in two different administrations, she is a proven leader who knows how to get the job done. That, in my view, is what these hearings should focus on.

Let me talk about some areas of her record that really stand out for me.

The first is national security. The Eastern District of New York, where Ms. Lynch is U.S. Attorney, has led the

nation in terrorism convictions among all U.S. Attorney's Offices since 2001.

Lynch herself has overseen the prosecutions in several important terrorism cases, including the prosecutions of:

- **Six individuals connected to Najibullah Zazi**, who, as part of an Al Qaeda plot, attempted to set off a bomb in the New York City subway system;
- **Rezwanul Nafis**, who attempted to use a weapon of mass destruction against the New York Federal Reserve Bank;
- **Four individuals, including Russell Defreitas**, who plotted to attack JFK Airport;
- **An individual who tried to go to Yemen to join Al-Qaeda in the Arabian Peninsula (AQAP)**; and

- Two individuals who allegedly were members of Al-Qaeda and attacked U.S. military forces overseas.

Her office has brought charges against 11 individuals alleging that they illegally worked to secure more than \$50 million in high-tech items for Russian military and intelligence agencies.

Her public comments also reveal that she understands the significant threat posed by people who are, in her words, “seduced by radical Islam, often over the Internet, travel[] overseas to engage in jihad,” and then return to the U.S. with the capability of “target[ing] our landmarks and infrastructure.”

I am confident she will be a sound voice leading the Justice Department on issues of national security.

As U.S. Attorney for a major urban district, Lynch clearly understands the importance of protecting ordinary people from gangs and organized crime – issues that are front and center for me as a Senator from California.

Her work in this area is very strong and shows she understands local criminal organizations, as well as more sophisticated groups that operate internationally. For example, in the last year, under her leadership:

1. Three individuals connected to the Genovese organized crime family pleaded guilty to a racketeering conspiracy.
2. A gang leader was found responsible, after a five-week trial, “for six murders, two attempted murder[s], armed robberies, murder-for-hire, narcotics distribution, and gambling on dog fighting”
3. Another gang leader was convicted and sentenced to 37 years of imprisonment for ordering the killings of two individuals, one of whom was believed to be associated with a rival gang.
4. Three individuals in a New York cell of an international cybercrime organization also were

convicted on charges stemming from cyberattacks that caused \$45 million in losses.

There are other areas of her record that are impressive as well, including her office's work on financial fraud and human trafficking.

I trust that her work in these areas will be explored during the questioning, and I look forward to hearing more from Ms. Lynch about how she expects to lead the Justice Department.

Before I end, I would like to say to you, Ms. Lynch, that I hope that you use your tenure as Attorney General to reinvigorate community policing.

Over the past several months, we have seen protests over the deaths of Michael Brown and Eric Garner turn violent. The pictures from Ferguson often show a line of heavily armed officers on one side, and protesters on the other.

It does not have to be this way. There is a better approach to policing than what we have seen on the streets of Ferguson.

As mayor of San Francisco, I dealt with similar circumstances when our mayor and a supervisor were assassinated. I believe that experience may be instructive today.

When the perpetrator of these horrific assassinations received a sentence that many believed to be too light, I feared that violence would erupt in our city.

To prevent violence from occurring, I sent our police chief to sit down with community leaders, merchants, and clergy. The chief explained to the leaders how his officers would police their neighborhoods and what steps they would take if violence occurred.

Second, the police worked in squads. One officer was responsible—and held accountable—for the performance of the squad. Each officer had a number on his helmet, which also increased accountability.

The point of my story is this: I hope that you use the influence you will have as Attorney General — including the grant funding you give out — to encourage police chiefs, sheriffs, and other local law enforcement officers to engage in community policing.

It takes work. It requires early and ongoing engagement by the police with the community. But it works.

Thank you very much, Mr. Chairman.

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing on the Nomination of Loretta Lynch to Serve as
Attorney General of the United States
January 28, 2015**

It is a pleasure to welcome Loretta Lynch to this Committee. Ms. Lynch is smart, tough, hard-working, and independent. She is a true prosecutor's prosecutor. Her qualifications are beyond reproach, which is why she has been unanimously confirmed by the Senate twice before to serve as the top Federal prosecutor based in Brooklyn, New York. I look forward to another swift confirmation process for Ms. Lynch.

As the United States Attorney for the Eastern District of New York, Ms. Lynch has brought terrorists and cyber-criminals to justice, obtained convictions against corrupt public officials from both political parties, and fought tirelessly against violent crime and financial fraud. Ms. Lynch has remained determined to protect the rights of victims. Ms. Lynch has worked hard to improve the relationship between law enforcement and the communities they serve – as evidenced by the fact that her nomination enjoys strong support from both. She has prosecuted those who have committed crimes against police officers, as well as police officers who have committed crimes. Her record shows that as Attorney General, Ms. Lynch will effectively, fairly, and independently enforce the law.

Born in North Carolina, Ms. Lynch is the daughter of a Baptist preacher and a school librarian. We are honored to have members of her family with us today. I know she will be introducing them to us momentarily. Ms. Lynch grew up hearing her family speak about living in the Jim Crow South, but she never lost faith that the way to obtain justice is through our legal system. Her nomination is historic. When confirmed as the 83rd Attorney General of the United States, she will be the first African American woman to lead the Department of Justice. I can think of no one more deserving of that honor.

Ms. Lynch will lead a Justice Department that faces complex challenges. Nearly one-third of its budget goes to the Bureau of Prisons, draining vital resources from nearly all other public safety priorities. A significant factor leading to this budget imbalance is the unnecessary creation of more and more mandatory minimum sentences. Passing new mandatory minimum laws has become a convenient way for lawmakers to claim that they are tough on crime – even when there is no evidence that these sentences keep us safer. That policy fallacy is one of the reasons we have the largest prison population in the world. And it is why I oppose all mandatory minimums. We must work together on thoughtful solutions to address our mass incarceration problem.

The Justice Department also needs strong leadership to keep up with the rapid development of technology. We must stay ahead of the curve to prevent and fight threats to cybersecurity and data privacy. The growing threat of cybercrime is very real but so is the specter of unchecked government intrusion into our private lives – particularly dragnet surveillance programs directed at American citizens. The intelligence community faces a critical deadline this June when three sections of the Foreign Intelligence Surveillance Act are set to expire. We must protect our national security and our civil liberties. We must work together to reform our Nation's surveillance laws so we can achieve both goals and restore the public's trust.

The next Attorney General will play an essential role in protecting all Americans on these issues and many others.

The President's selection for Attorney General—no matter the President—deserves to be considered swiftly, fairly, and on her own record. A role this important cannot be used as yet another Washington political football. I am confident that if we stay focused on Ms. Lynch's impeccable qualifications and fierce independence, she will be quickly confirmed by the Senate. Ms. Lynch deserves a fair, thoughtful, and respectful confirmation process – and the American people deserve an Attorney General like Ms. Lynch.

Ms. Lynch, I thank you for your years of public service, and I look forward to your testimony.

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**Senate Judiciary Committee Hearing on
Attorney General Nomination
January 28, 2015**

**Questions for the record from Senator John Cornyn to
Loretta E. Lynch**

1. Please give me three examples of where you disagree with Attorney General Eric Holder's decisions.
2. As U.S. Attorney in the Eastern District of New York, what mistakes have you made?
3. What assurance can you provide that you will prevent the President from violating the Constitution?
4. On March 11, 2013, Texas applied to the Department for expedited certification under 28 U.S.C. § 2265. On July 18, 2013, Senator Cruz and I wrote to Attorney General Holder asking him to inform us when he would make a decision. He did not decide, or respond to the letter. Will you commit to approve the § 2265 application submitted by Texas almost two years ago? And, if not, please explain why.
5. In Holt v. Hobbs, the Supreme Court ruled unanimously that the Religious Land Use and Institutionalized Persons Act required the Arkansas Department of Corrections to accommodate the religious liberty of a prison inmate and allow him to grow a beard in observance of his religious faith. In her concurrence, Justice Ginsberg wrote: "Unlike the exemption this Court approved in Burwell v. Hobby Lobby Stores, Inc., 573 U. S. ____ (2014), accommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief."

- a. Do you believe the scope of an American's religious liberty – protected by the Constitution and statutes – is inherently limited by whether or not other Americans might be affected by one person's religious belief?
 - b. Do you accept Burwell v. Hobby Lobby as binding precedent?
6. The Department is currently suing Texas because of its common-sense requirement that voters show ID to vote. The Supreme Court held in Crawford v. Marion County that voter ID laws are constitutional-and further held that voter ID laws are a legitimate means of deterring voter fraud, even in States with zero recorded incidents of voter impersonation.
 - a. Do you agree with the Supreme Court's decision in Crawford?
7. In its litigation with the State of Texas over voter ID, parties to the action argued that the state's voter ID requirement constituted a "poll tax" barred by the 24th Amendment. The Department of Justice did not take that position in the litigation. Do you agree that the law in question is not a poll tax?
8. In January 2012, the President made appointments to the National Labor Relations Board. The Senate did not consent, so the President purported to use his authority under the Recess Appointments Clause.
 - a. The Supreme Court held that "the President lacked the power to make the recess appointments here at issue." Do you accept the Court's ruling?
 - b. Do you agree with the Court that the President violated the Constitution in making the appointments at issue?

9. On April 15, 2009 the Counsel to the President issued an unpublicized memorandum ordering all executive departments and agencies to consult with White House Counsel on any FOIA-requested documents involving "White House equities." This policy permits the White House to filter any FOIA request that might relate to the White House in some fashion. There is no exemption in the Freedom of Information Act for "White House equities," nor does FOIA give White House Counsel the authority to intervene in FOIA requests.
 - a. If confirmed as Attorney General, you will have primary authority over agency implementation of FOIA. Will you continue to allow this practice?
 - b. If you will not stop this practice, will you commit to making this process more transparent, so that requestors know when their request has been reviewed and/or censored by White House Counsel's office?

10. According to the Center for Effective Government nearly half of the largest agencies in the federal government are failing in their implementation of FOIA. The Associated Press reported last year that the use of the deliberative process exemption to withhold information is at an all-time high. And reporters are expressing mounting frustration at the uselessness of FOIA, leading one reporter to say at your confirmation hearing that FOIA "is pretty much pointless and senseless now in its application at the federal level. It does no good." This is unacceptable.
 - a. If confirmed as Attorney General, what will you do to improve FOIA compliance within DOJ and at other agencies? Please list specific measures you will take.

11. The War Powers Resolution requires that the President receive Congressional authorization for any use of military force in hostilities that extends beyond 60

days. We have now been engaged in hostilities with ISIL nearly 6 months—well past the 60-days required by the War Powers Resolution.

- a. Do you believe the War Powers Resolution is binding on the President?
- b. If so, do you think that the conflict with ISIL qualifies as “hostilities” under the War Powers Resolution, such that the President must have Congressional authorization?

12. The President has claimed varying theories of authority for his use of military force since hostilities began in August, beginning first with Article II of the Constitution, then moving to the 2001 AUMF for al-Qaeda, then on to the 2002 AUMF for Iraq and back again to the 2001 AUMF.

- a. Under the 2001 AUMF for Al-Qaeda can the President continue the use of force against ISIL indefinitely, without ever seeking Congressional authorization?
- b. If not, at what point is the President constitutionally and statutorily required to seek Congressional authorization?

13. In the 2011 conflict with Libya, the President neither sought nor received congressional authorization for the use of military force, even though air strikes continued long past the 60-day requirement of the War Powers Resolution. The President’s tenuous legal theory was that the air strikes were not “hostilities” for purposes of the War Powers Resolution. This was in direct conflict with the legal opinion of the Department’s Office of Legal Counsel. If you are confirmed as Attorney General and the President acts counter to your counsel in similar manner—possibly violating the law—what will you do?

14. The Department has secured billions of dollars through settlement agreements over the past few years, but not all of the money claimed in these settlements has gone to a governmental entity. For example, in the recent \$16.65 Bank of America settlement—a case in which your office participated—less than 60% of that money was paid to a governmental entity. \$7 billion of the settlement is to be spent independently by Bank of America on a nation-wide “consumer relief” program. The Department does not have the statutory authority to design a nationwide consumer relief program and direct appropriations and grants from public funds toward that program. That is a legislative power. Yet, it appears to have done so through a settlement agreement.

a. Please explain where the Department has found the authority to appropriate public funds in such a manner and to design a public consumer relief program implemented by a private entity.

b. Please describe what oversight and transparency measures have been put in place to monitor the expenditure of these funds, and what control, if any, the federal government will have over how this money is spent, other than through the broad terms of the settlement agreement. Additionally, please describe what controls are in place to ensure that this money will go to the victims of the alleged wrongdoing—for instance, the purchasers of the residential mortgage-backed securities—rather than interest groups listed in the settlement agreement.

15. State financial regulators in my state and others play an important role in protecting consumers and ensuring that we have robust and diverse financial services marketplaces in our states. Licensing is an important tool for these regulators by seeking to ensure businesses and individuals meet certain professional standards and conduct themselves with integrity. Many financial regulators are required to review criminal background information as part of the licensing process. It is my understanding the FBI denied Tennessee State

officials access to any criminal history data starting January 1, 2015 and will deny Georgia access in July 2015. The FBI objected to these states' statutes authorizing --but not mandating -- use of a nationwide state licensing system to process state-required criminal background record on licensees. I am concerned because Texas has similar language in its licensing laws. As Attorney General, would you promise to work with states to ensure state regulators have an efficient electronic system to access FBI criminal background information for licensing purposes, as authorized under P.L. 92-544?

16. Last November, President Obama and the Department of Homeland Security announced a series of unilateral and unconstitutional Executive Actions that will suspend enforcement of our immigration laws against a class of up to 4 million illegal immigrants. Under these executive actions, certain classes of illegal immigrants will be allowed to remain in the United States and obtain work authorization. Before President Obama formally announced these Executive actions, the Department of Justice Office of Legal Counsel issued a memorandum agreeing that the President had the authority to unilaterally grant amnesty to certain classes of illegal immigrants.
 - a. Do you agree with the legal analysis contained in the OLC memorandum supporting President Obama's immigration Executive Actions?
 - b. As a career prosecutor, have you ever been involved in a program through which certain classes of offenders were systematically granted deferred action or immunity from prosecution after admitting their crime in a written application?
 - c. In your experience as a prosecutor, does the non-enforcement of a particular law generally incentivize or encourage future violations of that law?

- d. Are you concerned that President Obama's new deferred action program will incentivize or encourage future violations of our immigration laws?
- e. Under the theory of prosecutorial discretion advanced by the Department of Justice in the OLC memorandum regarding President Obama's immigration executive actions, would it be possible for the President to unilaterally extend deferred action to all 11 million illegal immigrants in the United States? If not, what is the limiting principle on Department of Justice's theory of prosecutorial discretion?
- f. Under President Obama's Executive Actions, many illegal immigrants who have been convicted of serious crimes in the United States will be eligible for deferred action and work authorization. For instance, a criminal alien would not be categorically excluded from receiving amnesty, even if they were convicted of the following types of offenses: child pornography possession, child abuse, assault, abduction, robbery, voter fraud, and many others. As a career prosecutor, you have routinely put criminals like these behind bars. Do you agree that granting deferred action to criminal aliens instead of removing them from the country will jeopardize public safety?
- g. In 2013, the Department filed an amicus brief in a Ninth Circuit case arguing that the State of Arizona should be required to issue drivers' licenses to illegal immigrants who are beneficiaries of the DACA program. Do you agree with this analysis? If so, do you believe that states should have the right to deny drivers' licenses to individuals covered by President Obama's November 2014 immigration executive actions? If confirmed as Attorney General, would you support litigation requiring states to issue driver's licenses to such individuals?

17. During a hearing last Congress, Gayle Trotter of the Independent Women's Forum testified before the Senate Judiciary Committee that guns are "a great equalizer" for women who are trying to protect themselves from aggressors. In my home State of Texas there have been countless examples of brave women standing their ground and defending themselves with firearms. For instance, last year in the South Texas city of Palmview, a pregnant woman stood her ground against two would-be home invaders and opened fire—forcing the criminals to retreat. They were later apprehended by SWAT officers after a long standoff. As Attorney General, will you work to encourage lawful firearm possession among women so that they are better equipped to defend themselves and their families against criminals?

18. In 1994, President Clinton and Congress enacted an "assault weapons ban" that prohibited the purchase of a large number of now-common self-defense and hunting firearms. In the decade since expiration of the ban, violent crime rates have dropped, while millions of law-abiding Americans have purchased self-defense weapons that were once prohibited under the assault weapons ban. Do you believe that the assault weapons ban was effective, and if confirmed as Attorney General, would you support the re-enactment of this type of gun ban?

19. From 2010-2011, the Department operated a controversial gun-walking program known as "Operation Fast and Furious." As part of that program, Department officials knowingly transferred thousands of firearms to drug cartel associates and straw purchasers with no intent that these weapons would be tracked or interdicted. All told, the Department lost track of nearly 2,000 weapons that were put into the hands of drug cartel agents as part of this reckless operation—many of which have been recovered at violent crime scenes on both sides of our Southern border. Tragically, weapons from Operation Fast and Furious were used in the December 2010 murder of United States Border Patrol Agent Brian Terry. Throughout congressional investigations into the Operation Fast and Furious tragedy, Attorney General Holder repeatedly misled and stonewalled

Congress, withholding tens of thousands of important documents through frivolous claims of executive privilege and making multiple inaccurate statements concerning his knowledge of the program.

- a. Do you believe that the gun-walking tactics used in Operation Fast and Furious were acceptable?
 - b. Can you think of any legitimate law enforcement rationale for transferring guns to drug cartel agents without interdicting or tracking them?
 - c. During Operation Fast and Furious, was it appropriate for Department of Justice officials to demand that licensed and law-abiding firearms dealers participate in the illicit transfer of weapons to suspected straw purchasers?
 - d. If confirmed as Attorney General, would you ever allow Department of Justice officials to request that law-abiding Americans violate a federal statute?
 - e. Will you pledge to fire all Department of Justice employees who utilize gun-walking tactics similar to those in Operation Fast and Furious, or who were directly involved in the execution of that program?
20. According to an unclassified threat assessment from the Texas Department of Public Safety: "Mexican cartels control most of the human smuggling and human trafficking routes and networks in Texas. The nature of the cartels' command and control of human smuggling and human trafficking networks along the border is varied, including cartel members having direct organizational involvement and responsibility over human smuggling and human trafficking operations, as well as cartel members sanctioning and facilitating the operation of human smuggling and human trafficking organizations." Do you agree that human smuggling

networks and drug cartels are directly responsible for many cases of human trafficking in the United States? If confirmed as Attorney General, will you prioritize the investigation and prosecution of these networks and organizations?

21. According to an October 2014 study by the Human Trafficking Pro Bono Legal Center, Department of Justice prosecutors secure restitution orders for victims in only 36% of human trafficking cases, and nearly half of U.S. Attorneys' Offices that have handled human trafficking cases have failed to win any compensation for victims. Do you agree that victim compensation and financial contribution from criminals should be a priority in human trafficking prosecutions? If confirmed as Attorney General, will you work with me to ensure that Department of Justice officials are adequately trained and instructed to seek victim restitution orders in all human trafficking cases?
22. Do you believe that mandatory minimum sentences are an appropriate law enforcement tool in crimes involving the sexual exploitation and slavery of children?
23. Do you support amending the federal hate crimes statute to cover the intentional targeting of a law enforcement officer?
24. The rape kit backlog is a national scandal with tragic consequences for crime victims. Experts estimate that hundreds of thousands of rape kits currently sit on shelves and in evidence lockers across the country gathering dust—each one holding the potential to imprison a rapist and deliver justice for victims of this horrible crime. In 2013, I introduced the SAFER Act, which was enacted into law and amended the *Debbie Smith Act* to both increase the funding available to support the testing of kits and to support audits, by local law enforcement, of their un-submitted kits. Numerous states, including Texas, have enacted laws requiring statewide audits, and these SAFER grants will make an enormous difference in supporting law enforcement's efforts to end the rape kit backlog

forever. Though the SAFER Act has been law for nearly two years, Attorney General Holder and the National Institute of Justice have failed to fully implement this law.

- a. Is there any excuse for Attorney General Holder's failure to fully implement the SAFER Act?
- b. Do you think the failure to implement this law sends a poor message to sexual assault survivors?
- c. If you are confirmed as Attorney General, will you pledge to immediately and fully implement the SAFER Act, as enacted in 2013?
- d. Will you commit to work with me to ensure that the National Institute of Justice is in full compliance with the SAFER Act requirement that not less than 75% of funds appropriated under the Debbie Smith Act are being deployed to state and local governments to analyze crime scene evidence, rather than being used for federal purposes that are not expressly permitted under the statute?
- e. Under current law, the National Institute of Justice is required to submit an annual report discussing their DNA backlog reduction grant expenditures, but these reports are often submitted to Congress more than one year after the conclusion of the covered Fiscal Year. As Attorney General, will you ensure that Congress receives annual DNA backlog reduction reports within 90 days of the end of each Fiscal Year?

Senate Committee on the Judiciary
Questions for the Record from Senator Ted Cruz to Loretta E. Lynch
Nominee for Attorney General of the United States

Questions on Executive Amnesty

I. Deferred Action

- On two occasions, the Obama Administration has granted amnesty (otherwise known as “deferred action” because it suspends removal proceedings otherwise required by law) to entire classes of illegal immigrants:
 - Deferred Action for Childhood Arrivals (“DACA”): In a June 2012 memorandum, then Secretary of Homeland Security Janet Napolitano announced that certain illegal immigrants under the age of 31 who came to the United States as children could apply for deferred action.¹
 - Deferred Action for Parental Accountability (“DAPA”): In a November 2014 memorandum, the current Secretary of Homeland Security Jeh Johnson expanded the DACA program to include childhood arrivals who are now over the age of 30 and announced a new program that would allow certain parents of children who are either citizens or lawful residents of the United States to apply for deferred action. This most recent program would grant amnesty to an estimated 5 million illegal immigrants.²

In a subsequent legal memorandum issued by the Department of Justice’s Office of Legal Counsel (OLC), the Administration justified the legality of its decision to grant deferred action to a class of 5 million illegal immigrants as a legitimate exercise of its prosecutorial discretion.³

1. **Based on the material and information contained in the OLC opinion, please answer each of the following questions separately:**
 - a. **Do you agree or disagree with the legal conclusions in the OLC opinion?**
 - b. **Cite the specific provisions of the United States Code that authorize the President to grant deferred action to illegal alien childhood arrivals and the illegal alien parents of U.S. citizens.**
 - c. **Define prosecutorial discretion.**
 - d. **Are the President’s actions a proper exercise of prosecutorial discretion as you have defined it and why?**

¹ Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (Jun. 15, 2012).

² Jeh Johnson, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014).

³ U.S. Department of Justice, Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014).

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- e. Does the fact that Congress has expressly authorized deferred action for certain classes of removable aliens⁴ but not for the classes covered by DACA and DAPA establish that there is no authority for the President to grant deferred action under DACA and DAPA?**
- Article II, Section 3 of the United States Constitution states that the President “shall take Care that the Laws be faithfully executed.” Although it may not be feasible for the President to enforce every law in every case, there is a difference between declining to enforce a law for an entire class of people (which is nothing more than rewriting the law) and declining to enforce a law based on the facts and equities of a particular case (which is a legitimate exercise of prosecutorial discretion).
 - 2. **Is it a violation of the Take Care Clause for the President to refuse to enforce the immigration laws for a distinct class of individuals who are not otherwise exempted by Congress?**
 - 3. **Do you believe the President has the authority to exercise executive discretion to:**
 - a. **categorically exempt a class of people from enforcement of the Affordable Care Act?**
 - b. **categorically exempt a class of people from enforcement of federal environmental laws?**
 - c. **categorically exempt a class of people from enforcement of the Internal Revenue Code?**
 - In the lawsuit that Texas and more than 20 other states have brought against the United States challenging the President’s actions,⁵ the United States Government has taken the position that its deferred action decisions are judicially unreviewable non-enforcement decisions.⁶
 - 3. **Do you agree that the President’s decision to defer removal actions for certain categories of illegal aliens is unreviewable by Article III courts? If your answer is yes, please provide a detailed explanation as to why.**

⁴ e.g., 8 U.S.C. 1154(a)(1)(D)(i)(II), (IV) (providing that certain individuals are “eligible for deferred action”); 8 U.S.C. 1227(d)(1) (authorizing an “administrative stay of a final order of removal” for T and U visa applicants who can demonstrate a prima facie case for approval); 115 Stat. 272, 361 (authorizing “deferred action” for certain family members of lawful residents killed on 9/11); 117 Stat. 272, 361 (authorizing “deferred action” for certain family members of certain U.S. citizens killed in combat).

⁵ See, e.g., <https://www.texasattorneygeneral.gov/files/epress/files/20141203ImmigrationExecutiveOrderLawsuit.pdf> (last viewed Feb. 5, 2015).

⁶ Pl.’s Reply in Support of Mot. for Preliminary Inj., *United States v. Texas*, No. 1:14-cv-254 (S.D. Tex.) (“Plaintiffs’ redress . . . is through the political process, not the courts.” (quoting Def. Opp. at 29)).

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Questions on Executive Amnesty

II. Work Authorization

- Under both DACA and DAPA, illegal immigrants granted deferred action would be eligible to apply for work authorization in the United States.
 1. **Do you agree or disagree that the President lacks the authority to grant work authority to illegal aliens who are eligible for deferred action under DACA or DAPA? If you disagree with this statement, please provide a detailed explanation as to why, including citations to the relevant statutory authority.**
 2. **Do you agree or disagree that affirmatively granting illegal aliens the right to work is not an exercise of prosecutorial discretion? If you disagree with this statement, please provide a detailed explanation as to why.**
- In his November 20, 2014 memorandum on DAPA, Secretary Johnson cites Section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) as the basis for his authority to grant work authorizations to illegal aliens.⁷ For purposes of determining work authorization, that provision defines the term “unauthorized alien” as an alien who is not “(A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or *by the Attorney General*” (emphasis added). (Note: The language referencing the Attorney General represents unchanged “legacy” language that has not been changed since the Department of Homeland Security was first authorized in 2002.)
 3. **Do you agree or disagree that the statutory language cited above means that the Secretary of Homeland Security has complete discretion to grant work authorizations to any alien? If you agree with this statement, please provide a detailed explanation as to why.**
 4. **Do you agree or disagree that the statutory language cited above gives the Secretary of Homeland Security complete discretion to grant work authorizations to all aliens? If you agree with this statement, please provide a detailed explanation as to why.**

⁷ Jeh Johnson, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014).

**Senate Committee on the Judiciary
Questions for the Record from Senator Ted Cruz to Loretta E. Lynch
Nominee for Attorney General of the United States**

Questions on Executive Amnesty

III. Advance Parole as Pathway to Citizenship/Benefits

- INA Section 212(d)(5) (8 U.S.C. 1182(d)(5)) authorizes the Secretary of Homeland Security to parole otherwise inadmissible immigrants “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” INA Section 245(a) (8 U.S.C. 1255(a)), in turn, allows an alien to have his status adjusted to legal permanent resident if that alien was “admitted or paroled” into the United States.
1. **Do you agree or disagree that the Secretary of Homeland Security lacks the legal authority to grant “advance parole” to illegal aliens covered by DAPA (i.e., the parents of U.S.-born children who, but for their unlawful presence, would be eligible for green cards)? If you disagree with this statement, please provide a detailed explanation as to why.**
 2. **If you think that the Secretary of Homeland Security does have the legal authority to grant “advance parole” to illegal aliens covered by DAPA, do you agree or disagree that granting advance parole could allow the Secretary of Homeland Security to then grant lawful permanent resident status to those aliens, thereby placing them on a “path to citizenship”? If you agree with this statement, please provide a detailed explanation as to why.**

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Questions on Executive Amnesty

IV. Driver's Licenses to DACA and DAPA Recipients

3. Do you think that federal law compels states to issue driver's licenses to DACA and DAPA recipients who are in the United States illegally? Whether you answer yes or no, please provide a detailed explanation as to why.

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I. Attorney General's Advisory Committee

- It is our understanding that you have served on the Attorney General's Advisory Committee of U.S. Attorneys (Advisory Committee) almost since the start of your second tenure as United States Attorney for the Eastern District of New York. Specifically, since assuming your duties as United States Attorney on May 3, 2010, you were appointed by Attorney General Eric Holder, also in May 2010, to serve on the Advisory Committee.⁸ In September 2011, you were appointed by Attorney General Holder to serve as vice chair of the Advisory Committee.⁹ In January 2013, you were appointed by Attorney General Holder to serve as chair of the Advisory Committee,¹⁰ and you continue to hold that chair.

The Advisory Committee, according to regulation, appears to provide very broad latitude in terms of the type and scope of input the Advisory Committee and its members may provide to the Attorney General, the Deputy Attorney General, and the Associate Attorney General.¹¹ The regulation provides (with emphasis added):

(b) The Committee shall make recommendations to the Attorney General, to the Deputy Attorney General and to the Associate Attorney General concerning *any matters which the Committee believes to be in the best interests of justice*, including, but not limited to, the following:

(1) *Establishing and modifying policies and procedures* of the Department;

(2) Improving management, particularly with respect to the relationships between the Department and the U.S. Attorneys;

(3) Cooperating with State Attorneys General and other State and local officials for the purpose of *improving the quality of justice in the United States*;

(4) Promoting *greater consistency in the application of legal standards throughout the Nation* and at the various levels of government; and

⁸ U.S. Department of Justice Press Release, *U.S. Attorneys Paul J. Fishman and Loretta E. Lynch to Lead Attorney General's Advisory Committee* (Sept. 1, 2011) (noting your initial appointment to the Advisory Committee in May 2010).

⁹ *Id.*

¹⁰ CNN Library, *Loretta Lynch Fast Facts*, CNN (Dec. 5, 2014) (noting your appointment as chair of the Advisory Committee in January 2013).

¹¹ 28 CFR 0.10(b).

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(5) Aiding the Attorney General, the Deputy Attorney General and the Associate Attorney General in *formulating new programs for improvement of the criminal justice system at all levels, including proposals relating to legislation and court rules.*¹²

1. Do you agree or disagree that the subject matter scope of the Advisory Committee, as provided for in the above regulatory language, is essentially limitless? If you disagree with this statement, please provide a detailed explanation as to why.
2. Have you, in any of your capacities on the Advisory Committee (i.e., as an entering member, vice chair, or chair) provided any written or verbal advice, feedback, or information, or communicated in any direct or indirect way, via official or non-official channels, with either the Attorney General, the Deputy Attorney General, or the Associate Attorney General, on any of the following subjects:
 - a. Any aspect of the Administration's immigration policy, including executive amnesty for illegal aliens or work authorization for illegal aliens?
 - b. Any aspect of the Administration's approach to the Defense of Marriage Act (DOMA), including the Administration's decision to no longer defend DOMA in federal court?
 - c. Any aspect of the Administration's enforcement of the Voting Rights Act or other federal laws pertaining to voting rights, including its resistance to states' efforts to enhance or enact voter identification laws or its selective enforcement of voting rights protections?
 - d. Any aspect of the Administration's enforcement of federal drug laws, including its executive decisions to not pursue enforcement in states that have legalized marijuana for recreational use?
 - e. Any aspect of the Internal Revenue Service's (IRS) political targeting of private organizations seeking tax-exempt status, including the decision to not appoint a special prosecutor to investigate that targeting?
 - f. Any aspect of Operation Fast and Furious, including Attorney General Holder's contempt finding or the litigation related to that contempt finding?
 - g. Any aspect of the Department of Justice's surveillance of reporters?
 - h. Any aspect of the Department of Justice's application of the Foreign Corrupt Practices Act (FCPA), including discussion of potential FCPA targets?
 - i. Any aspect of the Administration's response to the terrorist murder of U.S. citizens in Benghazi, Libya, on September 11, 2012, including decisions regarding the post-incident investigation by the Federal Bureau of Investigation?
 - j. Any aspect of the Administration's decision to close the Guantanamo Bay Detention Facility (GTMO), including the decision to transfer detainees out of GTMO?

¹² 28 C.F.R. 0.10(b).

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- k. Any aspect of the Administration's decision to close its Office of Political Affairs (OPA) in January 2011, including discussion with the U.S. Office of Special Counsel regarding the investigation into OPA?**

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II. DOJ Refusal to Defend DOMA

- According to Attorney General Eric Holder, it is the longstanding practice of the Department of Justice to defend “the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense.” Yet, in February 2011, the Attorney General announced that the Department would no longer defend the constitutionality of Section 3 of the Defense of Marriage Act, which defined marriage under federal law as the union of one man and one woman. The Attorney General offered two reasons for this decision: (1) the Department does not consider the arguments in defense of DOMA to be “reasonable,” and (2) the President concluded that DOMA was unconstitutional.¹³
 1. **Do you agree or disagree with Attorney General Holder that no “reasonable” arguments could be made in defense of a law that defines marriage as limited to the union of one man and one woman? If you agree with his position, please provide a detailed explanation as to why.**
 2. **Do you agree or disagree with the Attorney General’s decision to not defend DOMA?¹⁴ If you agree with his decision, please provide a detailed explanation as to why.**
 3. **Do you agree or disagree with Attorney General Holder that the President can refuse to defend a law in court that the President believes is unconstitutional? If you agree with his position, please provide a detailed explanation as to why.**

¹³ Press Release, *Statement of the Attorney General on Litigation Involving the Defense of Marriage Act*, Dept. of Justice (Feb. 23, 2011).

¹⁴ *United States v. Windsor*, 133 S. Ct. 2675 (2013) (Slip op. at 12, 6 n.2.).

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III. DOJ Refusal to Enforce Federal Marijuana Laws

- The Obama Administration arguably refuses to fully enforce federal drug laws with respect to marijuana, which is still listed as a Schedule I controlled substance in accordance with the Controlled Substance Act. Marijuana continues to be listed under Schedule I because it has long been considered by federal law enforcement and medical authorities to be both dangerous and without medicinal value.
 1. Do you agree or disagree with the federal position that marijuana is a dangerous controlled substance? **If you disagree with the federal position, please provide a detailed explanation as to why.**
 2. Do you agree or disagree with the federal position that marijuana has no medicinal value? **If you disagree with the federal position, please provide a detailed explanation as to why.**
 3. Do you agree or disagree with the statement that states that have legalized marijuana for recreational use have done so in violation of federal law? **If you disagree with this statement, please provide a detailed explanation as to why.**
 4. Do you agree or disagree with the statement that states that have legalized marijuana for medicinal use have done so in violation of existing federal law? **If you disagree with this statement, please provide a detailed explanation as to why.**
 5. Do you agree or disagree with the statement that federal prosecutors possess the prosecutorial discretion to refuse to prosecute all federal marijuana cases as a class or group? **If you agree with this statement, please provide a detailed explanation as to why.**
 6. Do you agree or disagree with the statement that federal prosecutors possess the prosecutorial discretion to refuse to prosecute federal marijuana cases where the amount of marijuana at issue falls below a certain threshold? **If you agree with this statement, please provide a detailed explanation as to why.**
- In April 2013, the Drug Enforcement Administration (DEA) released a report¹⁵ that reaffirmed the following: (1) that marijuana remains a dangerous controlled substance, and that its continued listing in Schedule I was entirely appropriate,¹⁶ and (2) that many (if not all) major American medical association, including the American Medical Association, the American Society of Addiction Medicine, the American Cancer Society, and the American Academy of Pediatrics, reaffirm the view that marijuana does not have medicinal value.¹⁷ The DEA's position on marijuana continues to be echoed by Dr. Nora

¹⁵ U.S. Drug Enforcement Administration, *The DEA Position on Marijuana* (Apr. 2013).

¹⁶ *Id.* at 1 (noting that “[m]arijuana is properly categorized under Schedule I of the Controlled Substances Act,” that “[t]he clear weight of the currently available evidence supports this classification,” and that “there is a general lack of accepted safety for its use even under medical supervision”).

¹⁷ *Id.* at 2-4 (citing these and other medical associations and organizations that reject the notion that smoked marijuana has any medicinal value).

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Volkow, Director of the National Institutes of Health's National Institute on Drug Abuse, who is on record stating that marijuana is a harmful, non-medicinal substance.¹⁸

7. Please read the cited DEA report and, based on the material and information contained in that report, answer each of the following questions separately:
 - a. Do you agree or disagree with any statement within, or portion of, the DEA April 2013 report? If you disagree with any statement within, or portion of, the DEA report, please provide a detailed explanation as to why.
 - b. Do you agree or disagree with any of the American medical associations that marijuana has no medicinal value? If you disagree with any of these American medical associations, please provide a detailed explanation as to why.
 - c. Are you aware of any domestic medical associations that maintain that marijuana is either medicinal, not harmful, or otherwise beneficial to users?
 8. Please read Dr. Volkow's cited *New England Journal of Medicine* article and, based on the material and information contained in that article, answer each of the following questions separately:
 - a. Do you agree or disagree with the premise that smoked marijuana is harmful to a person's health? If you disagree with this statement, please provide a detailed explanation as to why.
 - b. Do you agree or disagree with Dr. Volkow's professional assessment about the potential short- and long-term effects of marijuana usage? If you disagree with Dr. Volkow's professional assessment, please provide a detailed explanation as to why.
- Four states – Colorado, Washington, Oregon, and Alaska – have now legalized the cultivation, distribution, and sale of marijuana for purely recreational use, thereby creating a legalized and regulated market for the illegal controlled substance within their respective states. These states have taken these internal actions to promote marijuana, despite the fact that the cultivation, distribution, and sale of marijuana remain illegal under federal law.¹⁹ Some of these states' efforts may have at least been encouraged by the Obama Administration's recent executive declarations about new federal marijuana-related enforcement priorities.²⁰ Colorado's legalization of the cultivation, distribution,

¹⁸ e.g., *New England Journal of Medicine, Adverse Health Effects of Marijuana Use* (Jun. 5, 2014) (co-authored by Dr. Volkow, and discussing the short- and long-term harmful effects of smoking marijuana, which can include neurological impairment); American Psychological Association, *Marijuana addiction a growing risk as society grows more tolerant* (May 2011) (noting Volkow's comments about how smoking marijuana has the potential to interfere with cognitive development and function, particularly in developing brains).

¹⁹ *Governing, State Marijuana Laws Map* (Jan. 20, 2015) (identifying Colorado, Washington, Oregon, and Alaska as recreational use states).

²⁰ James M. Cole, *Guidance Regarding Marijuana Enforcement* (Aug. 29, 2013), identifying the eight following federal priorities regarding the enforcement of federal law against marijuana: (1) preventing the distribution of marijuana to minors; (2) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (3) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (4) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (5) preventing violence and the use of firearms in the

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and sale of marijuana has triggered at least one lawsuit by adjacent states, which now trace current marijuana enforcement difficulties to Colorado's legalization of marijuana.²¹

9. **Before you are confirmed to serve as the next Attorney General, what steps will you take to require these states to cease and desist their support of the cultivation, distribution, and sale of marijuana, or to otherwise bring these states into compliance with existing federal controlled substance law?**
 10. **Do you agree or disagree with the statement that state laws that affirmatively authorize the cultivation, distribution, or sale of marijuana and that attempt to regulate it are preempted by the Controlled Substances Act or other federal statutory law? If you disagree with this statement, please provide a detailed explanation as to why.**
 11. **Do you agree or disagree with the statement that federal statutory law, by virtue of the fact that it unequivocally declares marijuana to be a Schedule I controlled substance, preempts state law on the subject of marijuana, and therefore necessarily precludes states from creating a marketplace for the cultivation, distribution, and sale of marijuana under state law? If you disagree with this statement, please provide a detailed explanation as to why.**
 12. **Do you agree or disagree with the Obama Administration's decision to effectively suspend enforcement of the federal ban on marijuana (except with respect to certain enforcement priorities) in states that have legalized the cultivation, distribution, and sale of marijuana? If you agree with this decision, please provide a detailed explanation as to why.**
 13. **Do you agree or disagree with the statement that it violates the Take Care Clause for the Administration to enforce marijuana laws only in states that have not legalized the use of marijuana in some way? If you disagree with this statement, please provide a detailed explanation as to why.**
- Reports indicate that there are arguably significant banking irregularities among Colorado's legalized marijuana-related businesses, which raise the significant possibility that these businesses may be improperly avoiding the reporting of marijuana-related revenue in order to avoid paying federal income taxes.²²
14. **Before you are confirmed to serve as the next Attorney General, can you commit or not commit to dedicating the resources of the Department of Justice to investigating the degree to which these Colorado-based marijuana-related businesses may be avoiding the payment of federal income taxes? If you will not**

cultivation and distribution of marijuana; (6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (7) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (8) preventing marijuana possession or use on federal property.

²¹ Denver Post, *Nebraska and Oklahoma sue Colorado over marijuana legalization* (Dec. 18, 2014) (citing the multi-state lawsuit and the interstate ramifications of intrastate legalization).

²² Denver Post, *IRS fines unbanked pot shops for paying federal payroll tax in cash* (Jul. 2, 2014) (noting how marijuana-based businesses are frequently unable to use legitimate banks because of the illicit nature of their business).

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commit to investigating the tax compliance of these businesses, please provide a detailed explanation as to why.

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IV. DOJ Refusal to Appoint Special Prosecutors for IRS Matters

- In May 2013, the Treasury Inspector General for Tax Administration (“TIGTA”) confirmed that the IRS had used inappropriate criteria to identify potential political organizations applying for tax-exempt status under Section 501(c)(4).²³ In the months since, the President Obama has publicly discussed the severity of the situation,²⁴ and Attorney General Holder has asserted an intention to launch a criminal investigation into the above IRS abuses. To date, however, there are no outward signs of an active criminal investigation; the individual appointed to lead the internal Department of Justice investigation into the IRS had contributed heavily to President Obama and the Democratic Party;²⁵ and Attorney General Holder has refused requests to appoint a special prosecutor for an investigation into IRS.²⁶
 1. **Do you agree or disagree with Attorney General Holder’s decision to not appoint a special prosecutor? If you agree with his decision, please provide a detailed explanation as to why.**
 2. **Before you are confirmed to serve as the next Attorney General, will you or will you not commit to appoint a special prosecutor for the purpose of conducting an investigation into the potential criminal wrongdoing in connection with the IRS’s above documented conduct? If you will not commit to appointing a special prosecutor, please provide a detailed explanation as to why.**
- There have also been allegations that the IRS has shared thousands of pages’ worth of confidential taxpayer information with the White House.²⁷ Such sharing may have violated federal laws designed to protect the confidentiality of taxpayer information.
 3. **Before you are confirmed to serve as the next Attorney General, will you or will you not commit to appoint a special prosecutor for the purpose of conducting an investigation into any alleged sharing of confidential taxpayer information with the White House? If you will not commit to appointing a special prosecutor, please provide a detailed explanation as to why.**

²³ Treasury Inspector General For Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013).

²⁴ Press Release, *Statement by the President*, White House (May 14, 2013).

²⁵ Katie Pavelich, *BREAKING: New Emails Show Lois Lerner Was in Contact With DOJ About Prosecuting Tax Exempt Groups*, TownHall (Apr. 16, 2014).

²⁶ *Letter from Principal Deputy Assistant Attorney General Peter J. Kadzik to Senator Ted Cruz* (March 10, 2014).

²⁷ Robert W. Wood, *In ‘Lost’ Trove Of IRS Emails, 2,500 May Link White House To Confidential Taxpayer Data*, Forbes (Nov. 27, 2014).

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V. Operation Fast and Furious

- On August 19, 2009, the Obama Administration created a new strategy (dubbed “Operation Fast and Furious”) to ostensibly stem the flow of illegal weapons from the United States to Mexican drug cartels by putting an emphasis on identifying the trafficking networks rather than arresting straw purchasers of illegal weapons.²⁸ This, of course, required federal law enforcement to allow weapons to be illegally purchased and then trafficked. Unfortunately, the weapons were not tracked (or were not tracked successfully), which allowed many of these weapons to enter the stream of commerce and trafficking and be used in the commission of crimes, including violent crimes. The full extent of the damage done by Operation Fast and Furious may never be known.
1. **Do you agree or disagree that Operation Fast and Furious was effective in tracking and monitoring how Mexican drug cartels obtain firearms? If you agree with this statement, please provide a detailed explanation as to why.**
 2. **Do you agree or disagree that operations of this kind pose inherent risks to the safety and security of not only the American public, but also to American federal, state, and local law enforcement?**
- The House of Representatives has tried for years to acquire information from the Department of Justice about Operation Fast and Furious. The Department’s refusal to provide that information²⁹ on grounds of executive privilege led to the U.S. House of Representatives holding Attorney General Holder in contempt of Congress in 2012. This represented the first time in U.S. history that an Attorney General was held in contempt of Congress.³⁰ Because the Department refused to enforce the contempt citation, the Committee on Oversight and Government Reform (OGR) filed suit in federal district court. The court ordered the Department to begin producing documents by November 3, 2014.³¹ Approximately 64,000 pages of documents were finally produced, although the Department continues to assert privilege over others.³²
3. **Please provide your legal understanding of the origins, nature, and purpose of the doctrine of executive privilege.**
 4. **Do you agree or disagree that the doctrine was designed only to protect the confidentiality of a president’s inner circle of advisors, rather than to provide a general right of the President’s cabinet officers to withhold information from the**

²⁸ Office of National Drug Control Policy, *National Southwest Border Counternarcotics Strategy Implementation Update*, White House (Jan. 7, 2010).

²⁹ Deputy Attorney General James Cole, *Letter to Chairman Issa*, Department of Justice (Jun. 20, 2012).

³⁰ Alan Silverleib, *House Holds Holder in Contempt*, CNN (Jun. 29, 2012).

³¹ Josh Gerstein, *Judge won’t allow Holder appeal now in contempt case*, Politico, Nov. 18, 2013; Jennifer Koons, *In Loss for Department of Justice, Judge Rules Fast and Furious Lawsuit Can Proceed*, MainJustice.com (Sept. 30, 2013).

³² Susan Ferrechio, *Department of Justice Dumps 64,000 Pages Related to Fast and Furious*, Washington Times (Nov. 4, 2014).

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public? If you disagree with this statement, please provide a detailed explanation as to why.

5. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to turning over to both chambers of Congress any and all remaining documents that Attorney General Holder has refused to provide during the prior congressional investigations into Operation Fast and Furious? If you will not commit to turning over any and all remaining Operation Fast and Furious documents, please provide a detailed explanation as to why.
6. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to preserving the entire amount of Operation Fast and Furious documents in the possession of the Department of Justice, in order to permit a subsequent Administration or federal court the opportunity to review those documents? If you will not commit to preserving unreleased Operation Fast and Furious documents for future review, please provide a detailed explanation as to why.

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VI. DOJ Interference with Freedom of the Press

- Under Attorney General Holder, the Department of Justice obtained warrants to search the phone records of the Associated Press³³ and the personal e-mail account of Fox News Chief Washington Correspondent James Rosen³⁴ in connection with stories that they published containing classified information, all without informing the target of the search. In testimony before the House Judiciary Committee, Federal Bureau of Investigation Director Robert Mueller testified that investigations of “criminal co-conspirators,” as Rosen was labeled in the search warrant under which the surveillance was conducted, were used “quite often” without anticipating prosecution.³⁵
- 1. Do you agree or disagree that it is inappropriate for the Department of Justice to label a journalist as a “criminal co-conspirator” and then routinely conduct surveillance of that person without seeking to prosecute him or her, when there is no evidence that the journalist is doing anything other than engaging in well-accepted journalistic practices? If you disagree with this statement, please provide a detailed explanation as to why.**

³³ Mark Sherman, *Gov't Obtains Wide AP Phone Records In Probe*, Associated Press (May 13, 2013).

³⁴ Ann E. Marimow, *A rare peek into a Department of Justice leak probe*, Washington Post (May 19, 2013).

³⁵ FBI Oversight Hearing Before the H. Comm. on the Judiciary, 113 Cong. (2013) (Statement of Dir. Mueller, Chairman).

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VII. DOJ Foreign Corrupt Practices Act Abuses

- In much the same way as civil forfeiture, critics of the FCPA note that the Department of Justice collects and retains for use (without further congressional approval or disbursal from the Treasury) fines paid in settlement of federal FCPA investigations. This ability to retain FCPA fines incentivizes not only a vigorous application of the FCPA, but also “creative” legal theories (which can lead to investigations of companies for potentially innocuous behavior). Critics of the FCPA, and the Department’s pursuit of FCPA investigations, point out that the combination of investigation and potential litigation expenses frequently drive what may be innocent companies to settle, which both cements the revenue source for the Department and prevents federal judges from having opportunities to interpret provisions of the FCPA.
 1. **Do you agree or disagree with the claim that the ability of the Department of Justice to keep and use FCPA settlement fines incentivizes application of the FCPA? If you disagree with this claim, please provide a detailed explanation as to why.**
 2. **Has your office actually tried any FCPA cases to a verdict in federal court? If the answer is yes, please provide details about these cases.**
- As you know, the Criminal Division’s Fraud Section is charged with investigating and enforcing the criminal provisions of the FCPA. Recently, Andrew Weissmann was selected to be the Chief of the Fraud Section. Mr. Weissmann is a former prosecutor and FBI general counsel. In private practice, however, Mr. Weissmann has been an outspoken critic of DOJ’s FCPA program. Specifically, in a report³⁶ Mr. Weissmann drafted for the U.S. Chamber of Commerce’s Institute for Legal Reform, he has recommended that: (1) a compliance defense to the FCPA should be added; (2) a company’s liability should be limited for the prior actions of a company it has acquired; (3) a “willfulness” element should be added for corporate criminal liability; (4) a company’s liability should be limited for the actions of a subsidiary; and (5) the definition of “foreign official” under the FCPA should be changed.
 3. **Do you agree with any, some, or all of Weissmann’s proposals for reforming the FCPA?**
 4. **Which of these changes (if any) do you think could be done administratively, as opposed to legislatively?**
- In 2004, then-Deputy Attorney General (and current director of the Federal Bureau of Investigation) James Comey stated that “[the Department of Justice wants] real time enforcement, so that the public and potential white collar criminals see that misdeeds are

³⁶ U.S. Chamber Institute for Legal Reform, *Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act* (Oct. 26, 2010).

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swiftly punished.” Despite this statement, the 2014 OECD Foreign Bribery Report noted that “the average time taken (in years) to conclude foreign bribery cases has steadily increased over time, [from an average of 1.3 years in 2004] peaking at an average of 7.3 years taken to conclude the 42 cases in 2013.”³⁷ Lengthy federal investigations not only place a tremendous financial burden on the targeted corporations and their shareholders, but also on taxpayers who shoulder the agency’s expenses for conducting the investigation.

5. Do you agree or disagree with Director Comey’s statement regarding the value of real-time law enforcement? If you disagree with this statement, please provide a detailed explanation as to why.
 6. Given that the FCPA Unit within the Department’s Fraud Section has expanded its personnel from 2004 to today, and given that the Department receives even more international cooperation today than it did in 2004, do you agree or disagree that the Department should be witnessing reduced investigative timelines for FCPA investigations rather than increased timelines? If you disagree with this statement, please provide a detailed explanation as to why.
 7. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to dramatically reducing the timeline of FCPA-related Fraud Unit investigations, in order to reduce the financial burden on potentially innocent corporations and reduce investigation-related taxpayer expenses? If you will not commit to reducing these investigative timelines, please provide a detailed explanation as to why.
- Often, many of the countries with corrupt officials are the same countries that harbor terrorists, that seek to undermine U.S. foreign policy, and that have rampant bid rigging and illegal cartel conduct. On the opposite side of the equation, there are an increasing number of countries that have passed new anti-bribery statutes in the hope of curbing their own internal corruption problems and spurring legitimate economic growth.
8. How will you marshal the criminal justice resources of the Department of Justice to enforce the FCPA in a way that helps in the fight against terrorism, cartel conduct, and international money laundering? Please provide a detailed explanation, based on your current experience as United States Attorney for the Eastern District of New York, of how you intend to tackle the problem.
 9. Given that more and more countries are enacting and enforcing anti-bribery statutes, would you agree or disagree that the FCPA ought to be amended to restrict FCPA jurisdiction to countries that do not have a prima facie anti-corruption infrastructure? If you disagree with this statement, please provide a detailed explanation as to why.

³⁷ Organization for Economic Cooperation and Development, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* (Dec. 2, 2014).

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- The Department of Justice generally emphasizes the benefit of voluntary self-disclosure to, and voluntary cooperation with, FCPA investigations. Corporations are increasingly questioning the benefit, however, of rushing toward self-disclosure without demonstration of some sort of legal or cost benefit for doing so. To address this, some practitioners have suggested that the FCPA should contain a “safe harbor” from criminal prosecution for corporations that (1) have robust compliance programs, (2) self-disclose potential FCPA violations, and (3) cooperate fully with the Department’s investigation, akin to what the Antitrust Division has for cartel enforcement.³⁸ (The Department would, of course, be able to continue to obtain non-criminal penalties for violations.)
- 10. Do you agree or disagree with the statement that there should be an FCPA “safe harbor provision” to help corporations that are trying to do the right thing? If you disagree with this statement, please provide a detailed explanation as to why.**
- 11. If you agree with the concept of an FCPA safe harbor provision, please describe what the structure or contours of such a safe harbor provision should be, and how you would implement that provision. Please provide a detailed explanation, based on your current experience as United States Attorney for the Eastern District of New York, of how you would write and implement such a provision.**
- Members of the business community, practitioners, commentators, and even members of Congress have expressed frustration with the Department of Justice’s failure to publicize declined FCPA prosecutions, even where there is public knowledge that a particular corporation is under investigation. This practice may have several negative effects, including preventing corporations from having clarity about what type of conduct is considered acceptable. Given the Department’s financial incentive to ensure robust application of the FCPA, there is concern that this refusal to publish decline-to-prosecute information is intended to protect the FCPA fine-based revenue source for the Department.
- 12. Would you agree or disagree with the statement that FCPA decline-to-prosecute decisions should be made available to the public? If you disagree with this statement, please provide a detailed explanation as to why.**
- 13. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to publishing information about the FCPA cases that the Department has decided not to pursue or prosecute? If you will not commit to publishing this information, please provide a detailed explanation as to why.**

³⁸ Christopher M. Matthews, *Terwilliger to Propose New Rules for FCPA Disclosure*, Just Anti-Corruption (Jun. 22, 2010).

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VIII. DOJ Civil Asset Forfeiture Abuses

- There has been recent congressional concern about the Department of Justice's use of civil asset forfeiture, which has historically allowed federal prosecutors to seize cash and property from an individual before that individual is charged with a crime (and, in many circumstances, in the absence of any criminal charges or due process hearings).³⁹ It is also our understanding that you have been an aggressive user of civil asset forfeiture as United States Attorney for the Eastern District of New York, with your office receiving more than \$113 million in civil forfeiture proceeds from 123 cases between 2011 and 2013.⁴⁰
 1. **Please confirm the above number of civil asset forfeiture actions and the sum of civil asset forfeiture revenue taken in by your office during your recent tenure as United States Attorney (and, if these figures are incorrect, please provide the correct or updated figures).**
 2. **Of the total number of civil asset forfeiture actions that have occurred in the Eastern District of New York during your recent tenure as United States Attorney, how many of those actions resulted in formal criminal charges:**
 - a. **against the person from whom the assets were originally seized?**
 - b. **against another person (such as an accomplice in criminal activity)?**
- On Friday, January 16, 2015, Attorney General Holder issued an order restricting the practice whereby the federal government "adopts" state and local law enforcement seizures of property that might otherwise violate state civil asset forfeiture laws. Under the stated policy, this practice would be limited to state and local seizures of only "firearms, ammunition, explosives, and property associated with child pornography."⁴¹ While the order appears to be a step in the right direction, it also appears to be very limited in scope. For one, the order does not restrict in any way the federal government's ability to engage in unlimited civil asset forfeiture. Nor does it restrict any joint federal-state civil asset forfeiture.
 3. **Do you agree or disagree that the federal government's ability to engage in civil asset forfeiture presents due process concerns? If you disagree, please provide a detailed explanation as to why.**
 4. **Before you are confirmed to serve as the next Attorney General, will you or will you not commit to reducing the Department of Justice's use of civil asset forfeiture in the absence of formal criminal charges? If you will not commit to reducing civil asset forfeiture in the absence of formal criminal charges, please provide a detailed explanation as to why.**

³⁹ *Loretta Lynch's Money Pot*, Wall Street Journal (Nov. 21, 2014).

⁴⁰ *Id.*

⁴¹ Eric Holder, *Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies*, Department of Justice (Jan. 16, 2015).

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- Critics of civil asset forfeiture have highlighted the Department of Justice’s ability under current law to collect in an offsetting account and use (without further congressional approval or disbursal from the Treasury) revenue derived from civil asset forfeiture proceeds for Department activities. Because the Department has the freedom to keep and use this revenue without additional steps, critics maintain that the Department has every incentive to continue, and even expand, its use of civil asset forfeiture (and, for all intents and purposes, can self-fund certain agency functions, outside of the normal appropriations framework). One proposed solution for eliminating the incentive to engage in civil asset forfeiture is to change federal law to require that any proceeds collected as a result of civil asset forfeiture be deposited directly into the general fund of the Treasury.
5. **Do you agree or disagree that the Department’s ability to keep and use proceeds from civil asset forfeitures incentivizes the Department’s use of civil asset forfeiture? If you disagree with this statement, please provide a detailed explanation as to why.**
 6. **Do you agree or disagree that it would be more appropriate for the Department’s proceeds from civil asset forfeiture to be deposited directly into the general fund of the Treasury? If you disagree with this statement, please provide a detailed explanation as to why.**
- Frequent deposits beneath the \$10,000 threshold can trigger federal scrutiny on suspicion the depositors are seeking to evade federal oversight for crimes like money laundering or drug trafficking. On occasion, such deposits are seized using the Department of Justice’s civil asset forfeiture capacity. Frequent, small deposits, however, are a common habit of legitimate small businesses, which rely on small injections of revenue and adequate account levels to ensure smooth bill payment and operations.
7. **Do you agree or disagree that the Department should exercise greater care when it attempts to seize bank accounts of individuals and entities that could be sole proprietors or legitimate small businesses? If you disagree with this statement, please provide a detailed explanation as to why.**
 8. **Do you agree or disagree that there should be a “loser pays” policy in which the federal government would pay for the legal expenses of individuals whose property is ultimately determined by a federal court to have been seized inappropriately (or if there is some other demonstrable failure of due process)? If you disagree with this statement, please provide a detailed explanation as to why.**

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Questions on National Security Issues

I. Obama Administration's Criminal Justice Approach to Terrorism

- The Department of Justice recently announced the prosecution of two separate cases in the Eastern District of New York involving attacks by terrorists on U.S. troops in overseas theaters of operation.

The first case, announced on January 20, 2015, charged two Yemeni nationals who are members of al Qaeda, Sadiq Al-Abadi and Ali Alvi, with conspiring to murder U.S. nationals abroad and providing material support to al Qaeda. The complaint alleges that the two men engaged in attacks against U.S. forces in Afghanistan, in which an Army Ranger was killed and several others were seriously wounded. One of the defendants also engaged in attacks against U.S. forces in Iraq. The complaint states that the alleged conduct occurred between 2003 and 2008. The defendants were arrested in Saudi Arabia and then extradited to the United States.⁴²

The second case, announced on January 23, 2015, charged the defendant Faruq Khalil Muhammed 'Isa, who is identified as a member of a multinational terrorist network, with conspiring to kill U.S. nationals abroad and providing material support to a terrorist conspiracy to kill U.S. nationals abroad. The complaint alleges that the defendant assisted in orchestrating a suicide attack that killed five U.S. soldiers. The defendant was extradited from Canada.⁴³

1. **Do you agree or disagree with the Obama Administration's decision to bring to the United States terrorist fighters who engaged in combat against our troops overseas and to try them as civilian criminals entitled to all the procedural protections of our criminal justice system? If you agree with this decision, please provide a detailed explanation as to why.**
2. **Do you agree or disagree that these fighters should be treated as unlawful enemy combatants subject to indefinite detention and trial by military commission for violations of the laws of war? If you disagree with this decision, please provide a detailed explanation as to why.**
3. **Are you concerned that by bringing terrorists to the United States for trial, Administration policy might draw terrorists here and expose the public to danger?**

⁴² Press Release, *Two Yemeni Nationals Charged with Conspiring to Murder United States Nationals Abroad and Providing Material Support to al Qaeda*, U.S. Department of Justice (Jan. 20, 2015).

⁴³ Press Release, *Alleged Terrorist, Charged With Murder of Five American Soldiers, Extradited to United States*, U.S. Department of Justice (Jan. 23, 2015).

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Questions on National Security Issues

II. Obama Administration's Guantanamo Bay Detention Facility Policy

- It has been reported that, of the 620 detainees released from U.S. military's Guantanamo Bay Detention Facility (GTMO), at least 180 of these detainees have returned (or are suspected of having returned) to the battlefield to fight against U.S. forces and allies. According to U.S. officials, of those 180 confirmed or suspected recidivists, 20 to 30 have either joined ISIS or other militant groups in Syria.⁴⁴ There are now only 122 detainees at GTMO.⁴⁵
 1. **Do you agree or disagree with the President's decision to close GTMO? If you agree, please provide a detailed explanation as to why.**
 2. **If you agree, please provide your view on what to do with the remaining 122 detainees.**
 3. **Is it illegal for the United States government to detain terrorists indefinitely at GTMO?**
 4. **Is it illegal for the United States government to detain terrorists indefinitely at any other facility?**
 5. **Do you or do you not have concerns about what seems to be the Obama Administration's policy of transferring GTMO detainees to other governments' custody, regardless of whether these governments are willing or able to demonstrate their intent or capacity to continue to detain the transferred individuals?**
 6. **If it is illegal for the United States government to detain terrorists indefinitely at GTMO or any other facility, why is it legal or permissible for the United States government to transfer detainees to another government for indefinite detention?**
 7. **Will you or will you not commit to reviewing the Administration's policy of transferring detainees to foreign governments in light of the evidence of recidivism of transferees? If you will not commit to reviewing this policy, please provide a detailed explanation as to why.**

⁴⁴ Justin Fishel & Jenner Griffin, *Sources: Former Guantanamo detainees suspected of joining ISIS, other groups in Syria*, Fox News (Oct. 30, 2014).

⁴⁵ Fact Sheet, *Guantanamo by the Numbers*, Human Rights First (Jan. 15, 2015). Of the 242 detainees at the start of the Obama presidency, 116 have been transferred, repatriated, or resettled. *Id.*

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Questions on National Security Issues

III. Obama Administration's U.S. Citizen Domestic Drone Strike Policy

- In February 2013, a “White Paper” from the Department of Justice was released explaining that the government has the authority to kill U.S. citizens in a foreign country, outside the area of hostilities, if they are senior operational leaders of al Qaeda, provided that certain conditions are met, including that they present an “imminent” threat.⁴⁶
 1. **Do you agree or disagree that it would violate the Due Process Clause of the United States Constitution if the President ordered the killing of a U.S. citizen on U.S. soil without judicial process if that U.S. citizen does not present an imminent (meaning immediate) threat of death or serious bodily injury to others? If you disagree with this statement, please provide a detailed explanation as to why.**
- The Administration’s 2013 White Paper, which applied only to targeted killings of Americans overseas, explained that an “imminent” threat “does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.”⁴⁷
 2. **Do you agree or disagree with this White Paper’s definition of “imminent”? If you agree, please provide a detailed explanation as to why.**

⁴⁶ Office of Legal Counsel, *Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Organizational Leader of Al Qaeda or an Associated Force*, Department of Justice.

⁴⁷ *Id.*

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Questions on Voting Rights

I. The Voting Rights Act's Preclearance Requirement

- In *Shelby County v. Holder*, 133 S. Ct. 2612 (June 25, 2013), the Supreme Court invalidated Section 4 of the Voting Rights Act, which had established the formula for determining which states and localities must obtain preclearance from the Department of Justice before implementing any changes to their respective election laws.
 1. Do you agree or disagree with the Supreme Court's holding in *Shelby County* that the Voting Rights Act formula based on social conditions in 1965 no longer accurately reflected today's social conditions? **If you disagree with the Court's holding, please provide a detailed explanation as to why.**
 2. Do you agree or disagree with the view that the imposition of a federal preclearance requirement for changes to a state's election laws violates the Tenth Amendment of the United States Constitution? **If you disagree with this view, please provide a detailed explanation as to why.**
 3. Do you agree or disagree with the view that the preclearance requirement of the Voting Rights Act is obsolete in modern America? **If you disagree with this view, please provide a detailed explanation as to why.**

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Questions on Voting Rights

II. Voter Identification Laws and Legislation

- In November 2014 – after President Obama nominated you to serve as Attorney General – you were recorded in a video⁴⁸ speaking to an audience in Long Beach, California. You were highly critical of states’ voter identification laws. In the course of giving this speech, you made the following comments:
 - “Fifty years after the march on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for. ... People try and take over the State House and reverse the goals that have been made in voting in this country.”
 - “But I’m proud to tell you that the Department of Justice has looked at these laws, and looked at what’s happening in the Deep South, and in my home state of North Carolina [that] has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits will continue.”
 - “There’s still more work to do. People tell us the ‘dream’ is not realized because dreams never are. [Nelson] Mandela and [Martin Luther] King knew we had to continue working, and I’d be remiss if I didn’t tell you, that under this president and under this attorney general, that the Department of Justice is committed to following through with those dreams.”
 - Your comments during this video mirror the comments of Attorney General Holder, who has used the Department of Justice’s resources to block state voter identification laws or state efforts to pass new voter identification laws. Attorney General Holder has openly used his authority to pursue an “aggressive” assault of states’ laws or efforts to pass laws, claiming that these laws or efforts are attempts “disenfranchise American citizens of their most precious rights.”⁴⁹
1. **Do you agree or disagree that states voter identification laws have legitimate, franchise-protecting purposes and are not aimed at disenfranchising U.S. citizens? If you disagree with this statement, please provide a detailed explanation as to why.**
 2. **Do you agree or disagree that states have a legitimate right to prevent non-citizens from voting in their respective elections? If you disagree with this statement, please provide a detailed explanation as to why.**
 3. **Do you agree or disagree that states have a legitimate, constitutionally sound interest in preventing fraudulent votes from being cast in their respective**

⁴⁸ Drew MacKenzie, *Loretta Lynch Attacks Voter ID Laws in Video*, Newsmax (Nov. 10, 2014).

⁴⁹ Sari Horwitz, *Eric Holder vows to aggressively challenge voter ID laws*, Washington Post (Jul. 10, 2012).

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elections? If you disagree with this statement, please provide a detailed explanation as to why.

4. Do you agree or disagree that the millions of people who support voter identification laws have no racial animus whatsoever? If you disagree with this statement, please provide a detailed explanation as to why.
5. Do you agree or disagree that state efforts to pass voter identification laws are an assault on the goals and achievements of the Civil Rights Movement? If you agree with this statement, please provide a detailed explanation as to why.

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Questions on Voting Rights

III. Selective Voting Rights Enforcement

- There is concern that the Department of Justice under Attorney General Holder has embraced the view that federal voting rights laws should not be enforced in a race-neutral manner but should only be enforced to protect the rights of minority voters. Reports produced by the U.S. Commission on Civil Rights, in addition to feedback from the Commission's membership, indicate that the Department has incorporated this view into its policy and strategy.⁵⁰
 1. **Do you agree or disagree that federal voting rights laws are intended to protect—and that the Department of Justice should protect—the rights of all voters regardless of race? If you disagree with this view, please provide a detailed explanation as to why.**
 2. **Will you commit or not commit to reaffirming that it is the policy of the Department of Justice to pursue voting rights cases on behalf of all voters, regardless of their color, ethnicity, religion, or any other factor? If you will not commit to this specific step, please provide a detailed explanation as to why.**

⁵⁰ See U.S. Commission on Civil Rights, Letter from Commissioner Peter Kirsanow to Chairman Charles Grassley, 1-4 (Feb. 3, 2015) (detailing Department conduct, including that of former Deputy Attorney General Julie Fernandes, with respect to the Civil Rights Division's removal of cases involving white voters from Civil Rights Division consideration and citing specific Commission reports that explore this subject in depth).

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Questions on Executive Amnesty

I. Deferred Action

- Question 1(a)¹ asked if you agreed or disagreed with the legal conclusions of the Department of Justice’s Office of Legal Counsel (OLC) memorandum addressing the legality of President Obama’s deferred action decisions. Your answer, which addressed the basis for the OLC memorandum, did not answer the question asked.
 1. **Please take the opportunity to clarify or revise your answer: do you agree or disagree with the legal conclusions in the OLC memorandum?**

- Question 1(b) asked you to cite specific provisions of the United States Code that authorize the President to grant deferred action to illegal alien childhood arrivals and the illegal alien parents of U.S. citizens. You answered that it was your “understanding” that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.
 2. **Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?**
 3. **Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is your answer an indication that you agree with the Department’s legal position?**
 4. **Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?**
 5. **Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?**

- Question 1(d) asked if you thought that President Obama’s deferred action decisions represented a proper exercise of prosecutorial discretion (in accordance with your definition of prosecutorial discretion, in your answer to question 1(c)). You answered that “the memoranda issued by the Secretary of Homeland Security appears [*sic*] to be an exercise of discretion, consistent with stated congressional priorities, to focus limited agency resources on the prosecution and removal of high priority aliens, such as criminals, threats to national security, and recent border crossers.”
 6. **Is it fair to assess your answer as agreeing with the statement that these memoranda do represent appropriate exercises of prosecutorial discretion?**

¹ The original set of questions for the record and your responses to those questions as submitted to the Committee on or about February 9, 2015, are incorporated by reference. Please refer to them as needed.

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- Question 2 asked if you thought that President Obama’s refusal to enforce the immigration laws for a distinct class of individuals who are not otherwise exempted by Congress violated the Take Care Clause of the United States Constitution. You answered that it was your “understanding” that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.
 7. **Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?**
 8. **Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is your answer an indication that you agree with the Department’s legal position?**
 9. **Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?**
 10. **Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?**

- Question 3 asked if “the President” (meaning either President Obama or any future president) had the authority to exercise executive discretion to categorically exempt a class of people from (a) enforcement of the Affordable Care Act, (b) enforcement of federal environmental laws, and/or (c) enforcement of the Internal Revenue Code. You answered that your “understanding of the deferred action guidance issued by the Department of Homeland Security is that the guidance does not grant deferred action on a systematic basis,” but rather “establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation’s immigration laws in order to prioritize the limited resources afforded to the agency.”
 11. **Your answer mentions the application of a “series of factors” that “those individuals responsible for enforcing our nation’s immigration laws” are to apply on a “case-by-case basis.” To clarify, do you agree or disagree that federal employees of United States Citizenship and Immigration Services (USCIS) are free to ignore the deferred action criteria established by the Secretary of Homeland Security? If you disagree with this statement, please provide a detailed explanation as to why.**
 12. **Your answer mentions the application of a “series of factors” that “those individuals responsible for enforcing our nation’s immigration laws” are to apply on a “case-by-case basis.” From a legal perspective, would you have concern about the soundness of the deferred action programs if you knew (for example) that the deferred action applications were not being carefully inspected by USCIS employees, but were rather being screened through some automated process?**
 13. **In the event the Department of Homeland Security or USCIS uses some sort of automated review during any stage of the deferred action application review process, do you agree or disagree that such a process cannot be**

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considered to be the result of the application of a “series of factors” on a “case-by-case basis”?

- 14. Could President Obama or a future president refuse to enforce some or all of the Affordable Care Act, some or all federal environmental laws, and/or some or all of the Internal Revenue Code if he or she “establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation’s ... laws in order to prioritize the limited resources afforded to the [relevant] agency”?**
- Question 3² asked if you agreed that President Obama’s decision to defer removal actions for certain categories of illegal aliens is unreviewable by Article III courts. You answered that it was your “understanding” that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.
 - 15. Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?**
 - 16. Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is it an indication that you agree with the Department’s legal position?**
 - 17. Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?**
 - 18. Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?**
 - 19. In your independent legal judgment, under what circumstances do courts not have authority to review the legality of the President’s conduct in a case where standing can be established?**

II. Work Authorization

- Question 3 asked if you agreed or disagreed that the statutory language cited in the question meant that the Secretary of Homeland Security had complete discretion to grant work authorizations to any alien. You answered that it was your “understanding” that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.
 - 1. Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?**
 - 2. Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is it an indication that you agree with the Department’s legal position?**

² This second “Question 3” was a typographical error, and should have been sent to you as “Question 4.”

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3. **Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?**
 4. **Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?**
- Question 4 asked if you agreed or disagreed that the statutory language cited in the question meant that the Secretary of Homeland Security had complete discretion to grant work authorizations to all aliens. You answered that it was your “understanding” that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.
 5. **Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?**
 6. **Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is it an indication that you agree with the Department’s legal position?**
 7. **Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?**
 8. **Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?**

III. Advance Parole as Pathway to Citizenship/Benefits

- Question 1 asked if you agreed or disagreed that the Secretary of Homeland Security lacked the legal authority to grant “advance parole” to illegal aliens covered by DAPA (i.e., the parents of U.S.-born children who, but for their unlawful presence, would be eligible for green cards). You answered that you are “not an expert in immigration law,” and that you are “not familiar with the authority that the Secretary of Homeland Security exercises over parole decisions.” (You provided an identical response to Question 2, which asked if you thought that the Secretary of Homeland Security had the legal authority to grant “advance parole” to illegal aliens covered by DAPA, and whether you agreed or disagreed that granting advance parole could allow the Secretary of Homeland Security to then grant lawful permanent resident status to those aliens, thereby placing them on a “path to citizenship.”)
 1. **Please familiarize yourself with the relevant legal authorities and provide your best independent legal assessment.**

IV. Driver’s Licenses to DACA and DAPA Recipients

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- Question 3 asked if you thought that federal law compelled states to issue driver’s licenses to DACA and DAPA recipients who are in the United States illegally. You answered that you were not involved in on-point litigation in the Eastern District of New York, but that “neither the 2014 Deferred Action Guidance nor any federal statute compels states to provide driver’s licenses to DACA and DAPA recipients, so long as the states base eligibility on existing federal alien classifications—such as deferred action recipients, or other categories of aliens—rather than creating new state-law classifications of aliens.”
 1. **If a state can deny driver’s licenses to all deferred action recipients, then why, in your independent legal opinion, can it not deny driver’s licenses to a subset of deferred action recipients?**
 2. **Is it your understanding that deferred action confers a federal alien classification under federal law?**
 3. **Is there any federal statute that authorizes deferred action for illegal aliens covered by DACA and DAPA?**
 4. **If not, then on what legal basis can states ever be compelled to provide driver’s licenses to DACA and DAPA recipients?**

Questions on DOJ Legal Positions and Practices

I. Attorney General’s Advisory Committee

- Question 2 asked if you provided any written or verbal advice, feedback, or information, or communicated in any direct or indirect way, via official or non-official channels, with either the Attorney General, the Deputy Attorney General, or the Associate Attorney General, on an array of important legal subjects or issues that have been handled by the Obama Administration. Your answer referred us to the Advisory Committee “summaries of our monthly meetings, which I understand the Department made available in unredacted form to Committee staff for the purpose of its consideration of my record despite their pre-decisional, deliberative nature.” Your answer also stated that “some of the topics you have highlighted above arose in AGAC meetings, such as the lessons that United States Attorney’s Offices can learn from the flawed Operation Fast and Furious.” While appreciated and helpful, your answer is only partially responsive.
 1. **With respect to the Obama Administration’s approach to immigration policies:**
 - a. **Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?**
 - b. **Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?**

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2. With respect to the Obama Administration's approach to the Defense of Marriage Act (DOMA), including the Administration's decision to no longer defend DOMA in federal court:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
3. With respect to the Obama Administration's approach to enforcement of the Voting Rights Act or other federal laws pertaining to voting rights:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
4. With respect to the Obama Administration's resistance to states' efforts to enhance or enact voter identification laws:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
5. With respect to the Obama Administration's approach to enforcement of federal drug laws:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
6. With respect to the Obama Administration's refusal to appoint a special prosecutor to investigate alleged Internal Revenue Service (IRS) political targeting of private organizations seeking tax-exempt status:

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- a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
7. With respect to the Obama Administration's handling of Operation Fast and Furious, including Attorney General Holder's handling of his contempt citation:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
8. With respect to the Department of Justice's surveillance of reporters:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
9. With respect to the Department of Justice's application of the Foreign Corrupt Practices Act (FCPA):
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
10. With respect to the Department of Justice's investigative response to the terrorist murder of U.S. citizens in Benghazi, Libya, on September 11, 2012:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the

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Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?

11. With respect to the Obama Administration's decision to close the Guantanamo Bay Detention Facility (GTMO), including decision-making regarding the transfer of individual detainees or groups of detainees:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
12. With respect to the Obama Administration's decision to close its Office of Political Affairs (OPA) in January 2011:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
13. It is our understanding that the Executive Office for United States Attorneys is the component of the Department of Justice that provides logistical support for the Advisory Committee meetings. Given your leadership roles within the Advisory Committee, please provide information about the number of Department personnel who worked on Advisory Committee issues, the physical resources of the Department used in support of the Advisory Committee meetings, and any relevant cost estimates.
14. In the event that you are confirmed to serve as Attorney General, will you commit or not commit to release some or all of the Advisory Committee materials to the general public? If you will not commit to this step, please provide a detailed explanation as to why.

II. DOJ Refusal to Defend DOMA

- Question 1 asked if you agreed or disagreed with Attorney General Holder that no "reasonable" arguments could be made in defense of a law that defines marriage as limited to the union of one man and one woman. You responded that no reasonable arguments could be made in defense of such a law given that discrimination on the basis of sexual orientation is reviewed under heightened scrutiny.

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1. To date, is there any Supreme Court authority holding that classifications based on sexual orientation are subject to heightened scrutiny?
 2. If not, then is it fair to say that there are reasonable grounds for defending a law that defines marriage as limited to one man and one woman since the Department is free to argue that a lower standard of scrutiny should apply?
 3. Do you think it is unreasonable for an individual to define marriage as the union between one man and one woman?
- Question 2 asked if you agreed or disagreed with Attorney General Holder's decision to not defend the Defense of Marriage Act (DOMA). Your answer appears as if it contains an inadvertent typographical error.

1. Please take this opportunity to complete your answer.

III. DOJ Refusal to Enforce Federal Marijuana Laws

- Question 4 asked if you agreed or disagreed with the statement that states that have legalized marijuana for medicinal use have done so in violation of existing federal law. Your answer stated that the "manufacture and distribution of marijuana is prohibited by federal law, specifically, the Controlled Substances Act (CSA), except as authorized pursuant to limited exceptions within the CSA concerning research and related activities." Your answer did not answer the question asked.
 1. Please take the opportunity to clarify or revise your answer: do you think that states that have passed so-called medical marijuana laws are in compliance with federal law?
 2. Please take the opportunity to clarify or revise your answer: do you think that states with so-called medical marijuana laws cannot, by definition, be in compliance with federal law, given your own admission that "[m]arijuana is a Schedule I controlled substance with no currently accepted medical use in the United States"?
- Question 9 asked you what steps you would take to require states that have legalized the cultivation, distribution, and sale of marijuana to cease and desist in their support of such activities (in order to come into compliance with federal law). You answered that you were "not in a position to take the types of action" suggested because of your current position. The question could have been more clearly phrased.
 3. **In the event you are confirmed to serve as the next Attorney General, what specific steps will you take as Attorney General to require these states to cease and desist their support of the cultivation, distribution, and sale of marijuana, or to otherwise bring these states into compliance with existing federal controlled substance law?**

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- Question 12 asked if you agreed or disagreed with the Obama Administration’s decision to effectively suspend enforcement of the federal ban on marijuana (except with respect to certain enforcement priorities) in states that have legalized the cultivation, distribution, and sale of marijuana. You answered that “[n]either the Administration nor the Department of Justice has suspended enforcement of the Controlled Substances Act in states that have legalized the cultivation, distribution, or sale of marijuana,” and went on to cite Department guidance on marijuana enforcement.
- 4. Would you agree or disagree with the statement that the Department of Justice’s guidance on marijuana enforcement, in the form of four separate memoranda that have been issued over the course of the Obama Administration, amount to a rollback of federal marijuana enforcement efforts? If you disagree with this statement, please provide a detailed explanation as to why.**

IV. DOJ Refusal to Appoint Special Prosecutors for IRS Matters

- Questions 1 and 2 asked you if you agreed with Attorney General Holder’s decision to not appoint a special prosecutor to investigate potential IRS abuses, and also if you would commit to appointing a special prosecutor to investigate those abuses. Your joint answer to those two questions praised the objectivity of Department of Justice officials and deferred to the judgment of Attorney General Holder. Your answer did not answer the question asked.
 1. **Please take the opportunity to clarify or revise your answer: will you or will you not commit to appointing a special prosecutor to investigate the reported IRS abuses?**
 2. **During your time as Vice Chair and (subsequently) Chair of the Attorney General’s Advisory Committee, but prior to revelations of these IRS abuses entering the public domain, were you aware of any contact or communication between former IRS Commission Lois Lerner and any other Department of Justice officials, including, but not limited to, Attorney General Holder?**

V. Operation Fast and Furious

- Question 1 asked if you agreed or disagreed that Operation Fast and Furious was effective in tracking and monitoring how Mexican drug cartels obtained firearms. You answered that you “share[d] the perspective of many, including the Department of Justice’s Inspector General and Attorney General Holder, that [Operation Fast and Furious] was a flawed operation.”
 1. **Please take the opportunity to clarify or revise your answer: by stating that you believe that Operation Fast and Furious was a “flawed operation,” would you admit that it is fair to say that it was ineffective?**

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2. Please take the opportunity to clarify or revise your answer: by stating that you believe that Operation Fast and Furious was a “flawed operation,” would you admit that it may have jeopardized the safety of both U.S. citizens and Mexican nationals?
 3. Please take the opportunity to clarify or revise your answer: by stating that you believe that Operation Fast and Furious was a “flawed operation,” would you admit that it may have increased the flow of firearms into Mexico, whereas traditional enforcement measures would have prevented some of those weapons from entering cartel members’ hands?
 4. In the event you are confirmed to serve as the next Attorney General, as Attorney General, will you commit or not commit to at least conferring with the relevant congressional committee chairs prior to initiating any similar law enforcement operations (particularly if there is an international dimension to the operation)? If you will not commit to the above course of action, please provide a detailed explanation as to why.
- Question 3 asked for your legal understanding of the origins, nature, and purpose of the doctrine of executive privilege (which is the doctrine President Obama invoked, and to some degree is still invoking, to withhold documents pertaining to Operation Fast and Furious). You answered, in substance, that the “doctrine is constitutionally-based,” that it is a tool available to the executive branch “in order to preserve the separation of powers.” Respectfully, your answer demonstrates a potential, significant misunderstanding of the doctrine and application of executive privilege, and clarification is required, particularly insofar as you view it as a device for preserving the separation of powers.
 5. Please take the opportunity to clarify or revise your answer: by stating that the “doctrine [of executive privilege] is constitutionally-based,” is it your position that the doctrine of executive privilege is authorized by a specific clause or clauses of the United States Constitution? If your answer is yes, please cite the clause or clauses that serve as the basis for position.
 6. Please take the opportunity to clarify or revise your answer: by stating that the doctrine of executive privilege exists “in order to preserve the separation of powers,” is it your position that executive privilege is available for use on any occasion when a president or his personnel do not wish to disclose potentially problematic or embarrassing information to Congress? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
 7. Please take the opportunity to clarify or revise your answer: by stating that the doctrine of executive privilege exists “in order to preserve the separation of powers,” is it your position that executive privilege can be invoked in circumstances other than the narrow circumstance of shielding advice and counsel provided by a president’s “inner circle” of advisors? If your answer is yes, please provide a detailed explanation of your position, with

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- appropriate citations to existing provisions in the United States Code and precedential federal case law.
8. Existing case law on the subject of executive privilege seems to support the principle that the doctrine of executive privilege is very limited, and can only be applied in the narrow circumstance of shielding advice and counsel provided by a president's "inner circle" advisors. Do you agree or disagree with this view of the limits of application of the doctrine of executive privilege? If you disagree with this view, please provide a detailed explanation as to why, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
 9. In the event you are confirmed to serve as the next Attorney General, as Attorney General, will you commit or not commit to advising the President of the current, precedent-based limitations of the application of the doctrine of executive privilege? If you will not commit to the above course of action, please provide a detailed explanation as to why.
- Question 5 asked you if you would commit to turning over to both chambers of Congress any and all remaining documents that Attorney General Holder has refused to provide during prior congressional investigation of Operation Fast and Furious. You answered that you would only commit to "being open to a negotiated resolution of the dispute that balances the legislative need for the documents at issue with the important Executive and constitutional interests at stake."
10. Please take the opportunity to clarify or revise your answer: by stating that you would be "open to a negotiated resolution," is it your position that the executive branch can never be required to produce documents, even in accordance with a duly issued subpoena? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
 11. Please take the opportunity to clarify or revise your answer: by stating that you would be "open to a negotiated resolution," is it your position that the executive branch can never be compelled to produce documents, even if it is an Article III federal court that compels that production? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
 12. One could interpret your answer as an indication that the executive branch can never be compelled to produce documents, even under circumstances where an Article III federal court compels that production. Would you agree that the executive branch is compelled to produce documents when instructed to do so by an Article III federal court? If you would not agree with this statement, please provide a detailed explanation as to why, with appropriate citations to existing provisions in the United States Code and precedential federal case law.

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13. Please take the opportunity to clarify or revise your answer: by stating that you would be “open to a negotiated resolution of the dispute that balances the legislative need for the documents at issue with the important Executive and constitutional interests at stake,” is it your position that the executive branch gets to make the determination about what materials to turn over or not to turn over to Congress based on what the executive branch believes Congress needs for legislative purposes? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
14. Please take the opportunity to clarify or revise your answer: by stating that you would be “open to a negotiated resolution of the dispute that balances the legislative need for the documents at issue with the important Executive and constitutional interests at stake,” is it your position that the legislative branch does not possess independent constitutional authority to compel production of documents for oversight purposes? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
15. In the event you are confirmed to serve as the next Attorney General, as Attorney General, will you commit or not commit to complying with all duly issued subpoenas and Article III federal court orders that call for the production of Department of Justice documents? If you will not commit to the above course of action, please provide a detailed explanation as to why.
- Question 6 asked you if you would commit to preserving the entire amount of Operation Fast and Furious documents in the possession of the Department of Justice, in order to permit a subsequent Administration or federal court the opportunity to review those documents (if they so chose). You answered that you would only commit to “ensuring that the Department complies with its preservation obligations.”
16. Please take the opportunity to clarify or revise your answer: by stating that you would only commit to “ensuring that the Department complies with its preservation obligations,” is it your position that the Department has the authority to dispose of investigation-related documents or other sensitive documents? If your answer is yes, please provide a detailed explanation of your position.
17. In light of recent concerns about federal agency record destruction and federal agency failure to preserve records, and your knowledge as the United States Attorney for the Eastern District of New York, please provide detailed information about the following:
- a. Your understanding of the Department’s statutory record preservation obligations.
 - b. Your understanding of the Department’s regulatory record preservation obligations.

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- c. Your understanding of the Department's internal (i.e., Department-established) record preservation obligations.
18. As the United States Attorney for the Eastern District of New York, you should be familiar with the array of statutory options for criminal prosecution of individuals who violate record or information preservation requirements. Please provide a complete list of the federal criminal statutes that would apply to individuals who violate record or information preservation requirements (including the relevant statutes of limitation for each of those options).
 19. As the United States Attorney for the Eastern District of New York, please explain if the above list of federal criminal statutes covering the destruction of record or information preservation requirements would be applicable to federal employees.
 20. As the United States Attorney for the Eastern District of New York, do you think that, if it is determined that a Department of Justice employee destroyed Department records (regardless of subject matter), and that destruction in fact violated federal law, the employee who violated federal law should be prosecuted? If you disagree with this view, please provide a detailed explanation as to why.
 21. In the event you are confirmed to serve as the next Attorney General, as Attorney General, will you commit or not commit to prosecuting a Department of Justice employee under the above circumstances? If you will not commit to the above course of action, please provide a detailed explanation as to why.
 22. Putting aside formal preservation requirements, do you agree or disagree that most, if not all, Department of Justice documents in connection with Operation Fast and Furious investigation now have significant historical value, and ought to be preserved out of an abundance of caution for ensuring the completeness of the historical record? If you disagree with this view, please provide a detailed explanation as to why.

VII. DOJ Foreign Corrupt Practices Act Abuses

- Question 1 asked if you agreed or disagreed with the claim that the ability of the Department of Justice to keep and use FCPA settlement fines incentivized application of the Foreign Corrupt Practices Act (FCPA). You answered that you disagreed with the claim, which you “believe[d] is built on a faulty premise regarding the process by which criminal fines and other financial penalties are paid and subsequently put to use.” You went on to say that FCPA-related fines were not “kept” or “used” by the Department, that “no such use incentivizes application of the FCPA,” and that funds from these fines were “paid into the U.S. Treasury [and] are not available for use by the Department except through the appropriations process or by statute.” In subsequent parts of your answer, you specifically cited 42 U.S.C. 10601 and 28 C.F.R. 527 as the basis for your claim that the Department does not keep these funds, although you acknowledge the existence and use of the “3% Fund” and its ability to be used to “support certain litigation, data

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administration, and personnel costs.” Additional information is required about the Department’s ability to access and use the resources of the Crime Victim Fund.

1. Please take the opportunity to clarify or revise your answer: by stating that funds resulting from FCPA fines were “paid into the U.S. Treasury [and] are not available for use by the Department except through the appropriations process or by statute,” is it your position that the Crime Victim Fund is not an offsetting account, set apart from the general fund? If your answer is yes, please provide a detailed explanation of your position.
2. 42 U.S.C. 10601(c) essentially states that sums that are deposited in the Crime Victim Fund are available for expenditure without fiscal year limitation.³ Would you agree or disagree that this means that the Department of Justice’s access to the Crime Victim Fund is not restricted by the “appropriations process,” at least insofar as it means the Fund’s revenue is not dependent on the distribution of additional revenue from the general fund of the Treasury? If you disagree with this statement, please provide a detailed explanation as to why.
3. During your most recent tenure as the United States Attorney for the Eastern District of New York, did you ever require, as part of an FCPA settlement, that a corporation or individual had to contribute funding to a non-profit or for-profit organization, rather than paying just a fine to the federal government? If your answer is yes, please describe the circumstances when this was done and, for each instance, provide the name of the organization and the justification for this approach.
4. Please take the opportunity to clarify or revise your answer: would you agree or disagree that, by virtue of the existence of the 3% Fund (which you acknowledge), the Department does receive revenue as a result of its FCPA investigations? If you disagree with this statement, please provide a detailed explanation as to why.
5. Please take the opportunity to clarify or revise your answer: would you agree or disagree that, by virtue of the fact that the 3% Fund permits the Department to use Fund revenue to “support certain litigation, data administration, and personnel costs,” that it arguably does incentivize the initiation of FCPA investigations, even if indirectly? If you disagree with this statement, please provide a detailed explanation as to why.
6. During your most recent tenure as the United States Attorney for the Eastern District of New York, please indicate:
 - a. How much revenue your office has received from the 3% Fund since FY 2010.

³ 42 U.S.C. 10601(c) states in its entirety: “Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation. Notwithstanding subsection (d)(5) of this section, all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.”

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- b. If any revenue, how much of that revenue went to “support certain litigation.”
 - c. If any revenue, how much of that revenue went toward “data administration.”
 - d. If any revenue, how much of that revenue went toward “personnel costs.”
 - e. If any of that revenue went toward “personnel costs,” how much of that revenue was paid out in the form of bonuses, cash awards, or non-salary payments.
 - f. If any of that revenue went toward “personnel costs,” and any of that “personnel costs” revenue was paid out in the form of bonuses, cash awards, or non-salary payments, if any of that revenue was paid to Eastern District of New York attorneys who handled FCPA investigations.
- Question 2 asked if the Eastern District of New York, during your tenure as United States Attorney, has actually tried any FCPA cases to a verdict in federal court. You answered that your office has brought several “significant FCPA investigations [to] corporate resolutions.” The hyperlinks to two news stories describing major FCPA investigations make clear, however, that none of these cited investigations were in fact resolved at trial, but actually involved out-of-court resolution. Your citation to the news story recounting the conviction of former Morgan Stanley managing director Garth Peterson did involve a court, but it was in connection with Peterson’s guilty plea on criminal charges for evading Morgan Stanley’s own internal accounting controls. You acknowledge in your answer that “the United States Attorney’s Office for the Eastern District of New York has not had an FCPA trial to date.”
 - 7. **Would you agree or disagree that the absence of federal court involvement in FCPA cases (given that all of the FCPA cases you have handled within the Eastern District of New York) prevents the establishment of precedent that could serve as important public-domain guidance for companies seeking to remain in compliance with the provisions of the FCPA?**
 - Question 13 asked you if you would commit as Attorney General to publishing information about the FCPA cases that the Department has decided not to pursue or prosecute (in order to help provide guidance to companies who are seeking to avoid running afoul of federal law). You answered that you would commit to “continuing the Department’s practice of actively pursuing and implementing means by which declinations and other information about the decision to prosecute, or not, can be responsibly and appropriately shared,” but would not commit to sharing declination cases publicly.
 - 8. **With the understanding that providing information about declinations could allow some companies to circumvent federal law (which may be the Department’s primary concern), would you acknowledge that some**

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companies would use information about declinations to improve their FCPA compliance practices?

- 9. Would you at least acknowledge that the Department's refusal to share information about declinations contributes to the perspective that the Department prefers ambiguity of what will and will not be pursued by the Department for revenue-generating purposes?**

VIII. DOJ Civil Asset Forfeiture Abuses

- Throughout your testimony and your question responses, you have hit upon the important theme of "taking the profit out of crime and preserving the availability of assets for return to crime victims." Admittedly, this an important goal, and I do not think there is any disagreement with the concept that reducing the profit potential of crime reduces the incidence of crime. This theme, however, raises precisely the concern that exists among individuals who support reining in what are perceived to be excesses in the federal government's civil asset forfeiture authority.
 1. **Would you agree or disagree that it is at least possible that civil asset forfeiture has resulted in the permanent forfeiture of assets of innocent parties (i.e., individuals who have committed no crimes)?**
 2. **In situations where it is determined that a civil asset forfeiture effort resulted in the seizure of assets of innocent parties, would you agree or disagree that those seized assets ought to be returned to the innocent owners? If you disagree with this statement, please provide a detailed explanation as to why.**
 3. **As the United States Attorney in charge of the Eastern District of New York, has your office ever encountered an instance where Assistant United States Attorneys and/or the law enforcement with whom you collaborate seized the property of individuals who were ultimately determined to not be involved in any criminal activity or wrongdoing? If the answer to the above is yes, please indicate if:**
 - a. **The seized property was ever returned to the owner(s).**
 - b. **Any internal review was conducted as to the circumstances that led to the seizure of such property.**
 - c. **If there was an internal review into the circumstances of a seizure, if there were any findings of inappropriate seizure (or use of inappropriate tactics in a seizure).**
 - d. **If there was an internal review into the circumstances of a seizure, and there were any findings of inappropriate seizure (or use of inappropriate tactics in a seizure), if there were any disciplinary measures instituted.**
- Question 5 asked about the Department of Justice's ability to keep and use proceeds from civil asset forfeitures, and whether that ability incentivizes the Department's use of civil asset forfeiture. You answered that "[f]ederally forfeited assets are deposited into the Assets Forfeiture Fund," and that "[t]hese funds are in turn used to compensate victims of

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crime, pay administrative costs, and provide critical resources to state and local law enforcement.” You also answered that, “[i]f forfeited assets were deposited into the General Treasury instead of the Assets Forfeiture Fund, they would no longer be available for victims of crime.” Additional information is required about the Assets Forfeiture Fund.

4. Please cite the statutory authority for the Assets Forfeiture Fund.
5. Would you agree or disagree with the statement that the Assets Forfeiture Fund is an offsetting account, which can be accessed without specific appropriations from Congress? If you disagree with this statement, please provide a detailed explanation as to why.
6. Are any of the funds held in the Assets Forfeiture Fund available in the form of funding or grants for non-profit or for-profit organizations? If Assets Forfeiture Fund resources are available in the form of funding or grants for non-profit or for-profit organizations, please provide the following:
 - a. A list of all organizations that have received funding from the Assets Forfeiture Fund in the Eastern District of New York.
 - b. If any organizations have received funding from the Assets Forfeiture Fund in the Eastern District of New York, the amounts each group has received (broken down by calendar year, if necessary).
 - c. An explanation as to why that group received funding from the Assets Forfeiture Fund, when such funds are asserted to be for crime victims.
7. Please explain how, “[i]f forfeited assets were deposited into the General Treasury instead of the Assets Forfeiture Fund, they would no longer be available for victims of crime.” Why would it not be possible, for instance, for forfeited assets to be deposited into the “General Treasury,” with Congress appropriating funding annually for crime victim assistance or reimbursement?

Questions on Voting Rights

I. The Voting Rights Act’s Preclearance Requirement

- Questions 1-3 asked you about your perspectives on the Supreme Court’s *Shelby County v. Holder* Voting Rights Act decision, in which the Court invalidated Section 4 of the Voting Rights Act (thereby essentially striking down the functional aspects of the Voting Rights Act’s preclearance requirement). In your answers, you declined to answer these questions on the ground that there was ongoing litigation on the subject. As a result, you did not answer the question.
 1. Please take the opportunity to clarify or revise your answer: would you agree or disagree with the statement that the Voting Rights Act formula, which was based on social conditions in 1965, is no longer an accurate reflection of today’s social conditions, and therefore cannot adequately serve as the

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- foundation for a current statute? If you disagree with this statement, please provide a detailed explanation as to why. (Please note that this question is now not litigation-specific.)
2. Please take the opportunity to clarify or revise your answer: would you agree or disagree with the statement that the imposition of a federal preclearance requirement for changes to a state's election laws violates the Tenth Amendment of the United States Constitution? If you disagree with this view, please provide a detailed explanation as to why. (Please note that this question is not litigation-specific.)
 - a. If you believe that the current Question 2 is litigation-specific, please explain why.
 3. Please take the opportunity to clarify or revise your answer: would you agree or disagree with the statement that the preclearance requirement of the Voting Rights Act is obsolete in modern America? If you disagree with this view, please provide a detailed explanation as to why. (Please note that this question is not litigation-specific.)
 - a. If you believe that the current Question 3 is litigation-specific, please explain why.
 4. You indicated in your prior answers that the reason you could not answer these questions about the Voting Rights Act was that the *Shelby County v. Holder* litigation was ongoing. Please provide an update of the status of the *Shelby County* litigation.

II. Voter Identification Laws and Legislation

- Several questions under this section drew from public, recorded comments you made in Long Beach, California, about states' voter identification law efforts in the days immediately following your nomination to serve as the next Attorney General. Those comments raise serious questions about your perspectives regarding federal efforts to obstruct states' efforts to enhance or secure their voting rights laws.
 1. Please provide the following answers about this speech and the circumstances that led to this speech:
 - a. The nature of this trip to Long Beach, California.
 - b. Whether this trip was personal or professional, and, if professional, whether this was financed by the Department of Justice.
 - c. If this trip was both professional and financed by the Department, the official basis for the trip.
 - d. If this trip was both professional and financed by the Department, whether the speech that was recorded on the video is considered part of your official duties while on this trip.

Senator Richard Durbin
Written Questions for Attorney General Nominee Loretta Lynch

John R. Justice Student Loan Program

- The Justice Department's Bureau of Justice Assistance operates an important program called the John R. Justice (JRJ) program, which provides student loan repayment assistance to state and local prosecutors and public defenders across the nation.

Congress enacted the JRJ program in 2008, modeling it after the Attorney Student Loan Repayment Program that the Department of Justice operates for its own attorneys. The JRJ program helps state and local prosecutors and public defenders pay down their student loans in exchange for a three-year obligation to continue serving in their positions. This has proven to be an effective recruitment and retention tool for prosecutor and defender offices. And since the Department of Justice is awarding hundreds of millions of dollars in grants each year to state and local law enforcement, which generates higher numbers of arrests and criminal cases, it is critical that we help prosecutor and defender offices keep experienced attorneys on staff to handle these cases.

The JRJ program has helped thousands of prosecutors and defenders across the country. But for the program to remain successful, the Department of Justice must remain committed to this program and to carefully administering and overseeing it. **Will you commit to work with me to keep this program operating effectively during your tenure if you are confirmed?**

Hate Crimes Reporting

- Last October marked the five-year anniversary of the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, which gives the FBI authority to investigate violent hate crimes when state law enforcement agencies are unable or unwilling to do so. As I said at the time of its enactment, this law is one of the most important civil rights laws of our time.

Despite this success, we have much more work to do. The FBI recently released its annual Hate Crimes Statistics report, which indicated that state and local law enforcement jurisdictions reported 5,928 hate crimes in 2013. As significant as that number is, the Bureau of Justice Statistics has estimated that there are actually more than 250,000 hate crimes annually.

If confirmed, will you take steps to ensure that the FBI and the Department of Justice work together with state and local law enforcement and affected communities to improve hate crime reporting?

Questions for the Record from Senator Dianne Feinstein
For Loretta E. Lynch, to be Attorney General of the United States
Senate Committee on the Judiciary

Dangers Posed by Drones

Unmanned aircraft – or, drones – are becoming an increasing problem for air travel. Some reported “near-misses” have involved major airliners near LaGuardia and JFK airports in the district where you serve as U.S. Attorney.

For example, as reported by the Washington Post on November 26, 2014, here is one example of what FAA found: “Jet Blue Flight 1572, an Airbus 319 inbound to LaGuardia Airport, reports that a suspected small drone flew ‘under the nose of the aircraft’ while between 1,500 and 2,000 feet.”

Here is another example: “Air traffic controllers report that a red, black, and yellow drone ‘almost hit’ Republic Airlines Flight 6230 while inbound to LaGuardia Airport . . . about two miles north of the Verrazano-Narrows Bridge.”

Just in the last week, a drone breached White House airspace, landing on the White House grounds. Press reports also state that, over the weekend, another possible drone flew approximately 100 feet above a United Airlines flight that was at an altitude of 7,000 feet. The flight was on its way to Boston’s Logan Airport.

- **Will you commit that the Department of Justice will review federal criminal laws to determine which may apply to uses of drones that create hazards for air travel?**
- **If that review shows that additional legislation is necessary, will you commit to work with me on such legislation?**

Re-programming Funds Away from SCAAP

The Department of Justice administers the State Criminal Alien Assistance Program, or “SCAAP,” which reimburses states and localities for the extraordinary costs that they incur for incarcerating undocumented criminal immigrants.

Although such costs continue to escalate, funding for SCAAP continues to fall far short, getting slashed by 70% since 2000. Eligible jurisdictions receive only pennies on the dollar.

California counties' combined SCAAP reimbursement deficit stretches into the hundreds of millions of dollars annually. Its counties are reimbursed for 10% or less of their SCAAP-related expenses.

Furthermore, in each of the past two years, DOJ has used its general authority to reprogram up to 10% of an appropriation to reprogram the maximum 10% away from SCAAP, thus further reducing the already-slashed SCAAP funding by another almost \$50 million.

- **Will you commit to ending this undermining of the SCAAP program by stopping the reprogramming of the maximum 10%?**

Lawyers for Unaccompanied Alien Children

In December 2008, the Unaccompanied Alien Child Protection Act was signed into law as part of the Wilberforce Trafficking Victims Protection Reauthorization Act. I worked on the 2008 and 2013 reauthorization bills to ensure that, among other things, children who arrive in the United States without a parent or guardian, are, to the greatest extent practicable, provided with counsel to represent them in legal proceedings.

As you likely know, almost 70,000 unaccompanied children entered the U.S. this summer from Central America, and current funding is only a drop in the bucket compared to the need. Yet studies show that the rate of unaccompanied alien children who show up for immigration court increases from 60.9% to 92.5% when represented by a lawyer.

- **Will you commit, if confirmed, to work with the Secretaries of Health and Human Services and Homeland Security to provide as many of these children as possible with legal representation?**

Immigration Judge Shortage

I met with a group of immigration judges this past summer who work for the Department of Justice's Executive Office for Immigration Review, known as EOIR, and was appalled at the case backlog and extreme workload they face.

With a backlog of a staggering 375,000 cases in the immigration courts, the average wait time for cases is over a year. California has the largest pending immigration court backlog, with 77,246 cases, and the second-longest wait in the country, with an average wait time of 686 days. The longer that these cases go unresolved, the longer it takes to remove criminals from this country and to end the legal limbo that thousands of people eligible for immigration relief face.

Congress recently appropriated funds to EOIR for the Justice Department's request of 35 new immigration judge teams. But considering the backlog, it is not enough.

- **If confirmed, will you work to increase the number of immigration judges to help alleviate this backlog?**

Federal Marijuana Enforcement

As you know, under Attorney General Holder, the Department of Justice has scaled back enforcement of federal marijuana laws – especially in states that have legalized recreational and/or medical marijuana under their own laws.

In California, for example, we learned that there are as many as 200 to 300 large marijuana grow sites in Fresno. Yet, the U.S. Attorney in that district prosecuted only 37 marijuana cases between August 2013 and December of 2014. He told my staff that he did not have sufficient resources to bring more cases.

Despite these changes to Department policy, your office in New York has reportedly prosecuted “the world’s largest marijuana suppliers.”

- **As Attorney General, do you plan to continue Attorney General Holder’s policy, or do you plan to take a fresh look at the Department’s approach to the enforcement of federal drug laws?**

Protecting Our Youth From Dangerous Synthetic Drugs

Synthetic drugs, like K-2, Spice, and Bath Salts, have been of major concern in recent years, prompting a number of efforts to combat these substances. However, when Congress outlawed several of these synthetic drugs, traffickers did not stop producing them. Instead, they slightly altered the chemical structure of illegal drugs to produce what are called “controlled substance analogues,” which mimic the effects of drugs like ecstasy, cocaine, PCP and LSD.

I have introduced a bipartisan bill with Senator Portman and many others, the *Protecting Our Youth from Dangerous Synthetic Drugs Act of 2015*, which gives law enforcement tools they need to address this issue.

- **Would legislation that enables the federal government to establish and maintain a list of controlled substance analogues, thereby clearly defining whether a new synthetic drug is illegal, be helpful to the Department of Justice's efforts to prosecute synthetic drug cases?**

Increase in Methamphetamine Seizures at the California-Mexico Border

In 2006, the *Combat Meth Epidemic Act*, which I authored, became law. This legislation requires precursor chemicals used to make methamphetamine, such as pseudoephedrine, to be sold behind the counter. This law has helped to effectively reduce the production of methamphetamine in the United States.

As a consequence of the increased difficulty of manufacturing in the U.S., production has shifted to Mexico, where transnational criminal organizations are producing increasing amounts of methamphetamine and smuggling it into the United States. These organizations are finding new and innovative ways to bring methamphetamine across the U.S. – Mexican border, including by liquefying it and by using drones.

It is my understanding that between 2009 and 2014, there was a 300 percent increase in seizures at the California ports of entry, and that methamphetamine seized in San Diego accounted for 63 percent of all methamphetamine seized at all ports of entry nationwide.

I also understand that methamphetamine-related emergency room visits, deaths and arrests are on the rise in San Diego, as are prosecutions.

- **Under your leadership, what steps will the Department of Justice take to counteract the increase in methamphetamine smuggling from Mexico into California?**
- **Are there additional tools or resources that Congress can provide the Department with to ensure these dangerous substances don't continue to cross our borders?**

Preventing Terrorists from Obtaining Guns and Explosives

I am very concerned that individuals with links to terrorism regularly purchase guns in the United States.

- According to the Government Accountability Office, between February 2004 and December 2010, there were 1,453 cases in which a known or suspected terrorist — individuals who at the time were on federal terrorist watch lists — tried to buy a firearm or obtain a firearm or explosives license or permit.
- And in 91% of these cases — a total of 1,321 separate occasions — those known or suspected terrorists successfully passed a background check.

Now, here are three recent examples of terrorists who obtained and used firearms:

- The Kouachi brothers—the terrorists who killed 12 people at Charlie Hebdo in Paris—have been reported in the press to be on the U.S. no fly list.
- One of the alleged Boston Marathon bombers, Tamerlan Tsarnaev, was reportedly placed on two terrorist watch lists in 2011.
- And in 2009, Abdulhakim Mujahid Muhammad opened fire at a military recruiting station in Little Rock, Arkansas. He killed one and critically injured another.

In 2007, the Bush Administration's Justice Department drafted legislation to close this gap and prevent a known or suspected terrorist from buying a gun or explosive. In 2009, Attorney General Holder expressed the Obama Administration's support for this legislation.

- **Do you believe it is important to give the Executive Branch the power to prevent a known or suspected terrorist from buying a gun or explosive?**

Human Trafficking

As U.S. Attorney, you have prosecuted sex traffickers, and I applaud you for that work. However, I am concerned that the Department of Justice is not consistently prosecuting the buyers of sex acts involving children and other trafficking victims.

For example, during Operation Cross Country, the FBI recovered over 100 child sex trafficking victims and arrested 281 traffickers. However, no buyers were reported arrested.

As the State Department official who oversees anti-trafficking efforts noted, “[n]o girl or woman would be a victim of sex trafficking if there were no profits to be made from their exploitation.”

- **Will you commit to me that, if confirmed, you will direct federal prosecutors to prosecute the buyers of sex acts involving children and other trafficking victims?**

The website Backpage.com advertises “massages” and “escorts”, but is widely known to sell sexual services, including services involving adolescents who are under the age of 18.

For example, in an undercover operation, the Cook County (Illinois) Sheriff’s Office found that “100% of the women claiming to be massage therapists or platonic escorts on Backpage have accepted the offer of money for sex from our undercover male officers.” The Sheriff’s Office concluded that Backpage is a “haven for pimps and sex solicitors who are victimizing women and girls for their own gain.”

The Department of Justice has prosecuted—and obtained guilty pleas from—a website similar to Backpage called myRedBook.com, using the Travel Act, money laundering statute, and “aiding and abetting” statute.

- **Will you commit that, if confirmed as Attorney General, you will fully investigate and, if the facts warrant prosecution, prosecute Backpage.com and any other website that sells the sexual services of children?**

Wildlife Trafficking

Wildlife trafficking is a global crime that is valued at \$8 to \$10 billion annually, making it one of the most lucrative types of organized crime in the world. There is also increasing evidence that wildlife trafficking is funding armed insurgencies like Al Shabaab, the Lord’s Resistance Army, and the Janjaweed.

As importantly, wildlife trafficking is a morally repugnant practice that threatens some of our world’s most iconic species with extinction. Poachers are

slaughtering very young and juvenile elephants for their tusks due to the record high demand for ivory.

Senator Graham and I have introduced a bill to increase penalties on wildlife traffickers. The bill thus supports the Administration's *National Strategy to Combat Wildlife Trafficking*, which called for "placing wildlife trafficking on an equal footing with other serious crimes."

- **Could you describe why the Justice Department needs greater criminal penalties to successfully combat wildlife trafficking?**

Gang Legislation

You have significant experience prosecuting drug, gang, and gun crimes.

As you know, gangs continue to devastate many communities in California and across our country. The 2011 National Gang Threat Assessment found that gang membership increased by 40 percent between 2009 and 2011 and that "[g]angs are responsible for an average of 48 percent of violent crime in most jurisdictions and up to 90 percent in several others"

For nearly two decades, I have worked with Senator Hatch and others on legislation that would increase the tools that prosecutors have to prosecute gang members.

- **If confirmed, will the Department of Justice vigorously enforce federal law against gang members and others who commit major drug or gun trafficking crimes?**
- **Does the Department need stronger tools to combat gangs?**

Internet Gambling

I have long been concerned about Internet gambling. As you know, the FBI has concluded that online casinos are "vulnerable to a wide range of criminal schemes," including money laundering and ventures by transnational organized crime groups. Furthermore, online gambling gives minors and addicts access to gambling with only a few clicks on a smartphone or computer.

In 2011, the Department reversed its long-standing interpretation of the Wire Act, concluding for the first time that the Act prohibited the use of the wires for

gambling related to sporting events only. I believe a persuasive argument can be made that the Wire Act prohibits all Internet gambling.

- **Will you commit to me that you will direct Department lawyers to re-examine the Office of Legal Counsel's 2011 re-interpretation of the Wire Act?**

Community Policing

Over the past several months, we have seen protests over the deaths of Michael Brown and Eric Garner turn violent. The pictures from Ferguson often show a line of heavily armed officers on one side, and protesters on the other.

To avoid these pictures in the future, I strongly believe that, as a country, we must reinvigorate community policing. I commend President Obama for creating a task force to examine how law enforcement can reduce crime while building public trust.

- **If confirmed, will you use the influence you will have as Attorney General — including the grant funding the Department gives out — to encourage police chiefs, sheriffs, and other local law enforcement officers to engage in community policing?**
- **Will you make sure the voices of rank-and-file officers are included in the Department's work on this issue?**
- **In Los Angeles, I understand that the Simon Wiesenthal Center and the Museum of Tolerance have facilitated hundreds of sessions of training aimed at improving community policing and creating partnerships between police officers and the citizens that they protect. If confirmed, will you explore opportunities to work with organizations such as this one to strengthen the relationship between law enforcement and communities?**

Crime Victims' Rights

For many years, former Senator Kyl and I pushed to provide victims of crime with a set of basic protections in the federal criminal justice system. The effort started in 1996, when we introduced a federal victims' rights amendment to the Constitution. We re-introduced the amendment in 1997, 1998, 1999, 2002, and 2003. Hearings were held in the Senate and House, and the Senate Judiciary Committee passed the measure three times.

However, it became clear that we did not have the 2/3 support needed to pass a constitutional amendment. So, in 2004, we turned our attention to passing a statute that protects victims' rights in the federal system. On October 30, 2004, we succeeded in enacting the Crime Victims' Rights Act.

The law gives victims of federal crimes eight specific rights. They are the right to:

- Be reasonably protected from the accused;
- Be given timely notice of any public court proceeding involving the accused;
- Not be excluded from any such public court proceeding;
- Be reasonably heard at any such public proceeding;
- Confer with the attorney for the Government in the case;
- Full and timely restitution;
- Proceedings free from unreasonable delay;
- Be treated with fairness and with respect for the victim's dignity and privacy.

Unfortunately, crime victims continue to have difficulty exercising their rights under the Crime Victims' Rights Act. A 2008 report by the Government Accountability Office (GAO) found that "[p]erceptions are mixed regarding the effect and efficacy of the implementation of the CVRA" For instance, the report suggests that victims are not always notified of a plea hearing because the prosecution team does not believe it is in their interest to have victims attend certain hearings.

Two cases demonstrate how victims' rights are not always respected:

First, in the *Antrobus* case out of Utah, Vanessa Quinn, who was murdered by Sulejman Talovic using a gun that was illegally sold to him by Mackenzie Hunter, was not recognized by the district court as a victim of Hunter's crime. As a result, Quinn's parents, the Antrobuses, were not allowed to deliver a victim impact statement at Hunter's sentencing, to receive restitution for unreimbursed

funeral expenses, or to express their objections to the dismissal of one of the counts against Hunter. When the Antrobuses appealed, the Tenth Circuit applied a “clear and indisputable error” standard of review to the district court’s ruling — not the ordinary appellate standard of review, which reviews questions of law *de novo* — and concluded that “[t]his is a difficult case, but we cannot say that the district court was clearly wrong in its conclusion.”

Second, in a case named *In re Dean* concerning the BP oil spill, the 15 victims who were killed and more than 170 who were injured were denied the opportunity to consult with the government regarding the likelihood that criminal charges would be filed and the details of a potential plea bargain. Notably, the Fifth Circuit concluded that the district court had “misapplied” the Crime Victims’ Rights Act and “should have fashioned a reasonable way to . . . ascertain the victims’ views on the possible details of a plea bargain.” However, the appellate court declined to uphold the victims’ rights because of the very deferential standard it applied to its review of the lower court’s ruling.

Now, I want to ask you a series of questions about specific steps you can take to better ensure that the Justice Department upholds victims’ rights:

- **First, I have pushed legislation that would clarify that crime victims’ rights must be respected when a plea agreement or deferred prosecution agreement is reached before charges are filed. The Attorney General’s guidelines state that prosecutors should make “reasonable efforts” to consider victims’ views about prospective plea agreements, but consulting with victims is not required. Do you believe victims should have the right to be informed in a timely manner of a prospective plea agreement or deferred prosecution agreement, including before charges are filed?**
- **Second, when victims are denied their rights in the trial court and appeal that denial, do you believe the appellate court should apply the ordinary standard of appellate review — legal error or abuse of discretion — or the more deferential “clear and indisputable error” standard?**
- **Finally, the 2008 GAO report made several recommendations for steps the Justice Department should take to support victims in exercising their rights. Will you review the Department’s response to these recommendations and report back to me on how these recommendations have been implemented?**

Senator Portman and I wrote to Attorney General Holder in December to point out a troubling new study by The Human Trafficking Pro Bono Legal Center. That study found that federal prosecutors did not request restitution in 37% of qualifying human trafficking cases studied that were brought between 2009 and 2012. When the prosecutor did not request restitution, it was granted in only 10% of cases. Overall, restitution was awarded in only 36% of cases.

- **The law is clear that restitution shall be ordered for any trafficking offense. Why aren't prosecutors seeking restitution in every trafficking case?**
- **Will you commit to directing prosecutors to seek restitution for trafficking victims in every prosecution?**
- **Will you update the U.S. Attorneys' Manual to direct prosecutors to seek restitution and to seek restoration of forfeited assets when necessary to satisfy restitution orders?**

Written Questions of Senator Jeff Flake
U.S. Senate Committee on the Judiciary
Attorney General Nomination
February 5, 2014

1. As I mentioned in the hearing, I have concerns regarding the U.S. Attorney's Office for Arizona's recent order that pulls back on Operation Streamline's successful "zero tolerance" policy. I have a few follow up questions.
 - a. Do you believe that pulling back on a "zero tolerance" policy with regard to Operation Streamline will result in an increase or decrease in the number of illegal border crossers in the future?
 - b. What do you believe will be the consequences of it becoming widely known that certain categories of offenders, such as first time border crossers without criminal histories, are not being prosecuted?
 - c. Given your experience as a U.S. Attorney, do you believe that rolling back Operation Streamline and reducing prosecutions in the Yuma Sector, an area that has shown a significant decrease in border crossings since the implementation of Operation Streamline, is prudent?
 - d. In your testimony, you mentioned budget constraints as one reason for possibly pulling back on Operation Streamline's "zero tolerance" policy. Do you commit to notify me of budgetary issues related to Operation Streamline, if that appears to be an impediment to continuing the "zero tolerance" policy?
 - e. If you are confirmed, do you commit to provide specifics of the new Operation Streamline policy as well as any historical analysis done of the appropriateness of these changes given Operation Streamline's impact on recidivism?
 - f. In addition, if confirmed as Attorney General, will you support restoring Operation Streamline under a "zero tolerance" approach and removing the prohibition on prosecuting first time border crossers absent specific circumstances?
2. In your testimony, you stated that you are "not aware of how the [Department of Homeland Security] will actually go forward and implement by regulation [President Obama's executive action]." Can you explain whether you believe, regardless of its constitutionality, that President Obama's executive action must be implemented through the regulatory process? And, if so, what are the legal implications of not following that process?
3. I appreciate your commitment to ensure that Crime Victims Funds only be used to assist victims of crimes. In the January 13, 2015 memorandum that your office sent following up on your committee testimony, it is noted in the last paragraph the Department is "working on guidance that will minimize [the new law's] impact." It has been reported that the Department of Justice and the Office of Victims of Crime is considering a "pro-rata" solution that will partially shift the payment for victim advocates to non-Crime Victims Fund revenues. This would necessarily result in diminishing the services that are being provided to crime victims.
 - a. Will you commit to directing that victim advocates and supervisors be confined to serving the needs of crime victims?

4. Two weeks ago, the Department of Justice announced the criminal prosecution of three foreign terrorists who were charged for conspiring to kill U.S. soldiers who were fighting in Afghanistan and Iraq and providing material support to al-Qaeda. There are number of concerns with prosecuting these terrorists in Article 3 courts, including the safety of the proceedings, introduction and sharing of classified intelligence with these terrorists' lawyers, and, if convicted, sending terrorists into U.S. prisons where they can recruit disaffected prisoners to their cause. Given your involvement in these cases as U.S. Attorney for the Eastern District of New York, where these cases are being prosecuted, I assume you have dealt with these issues.
 - a. As the current U.S. Attorney for the Eastern District what did you do to mitigate these risks, and if confirmed as Attorney General, how do you plan on mitigating these risks in the future?
5. Last Congress, a Constitutional amendment was proposed to enable government to limit funds contributed to candidates and funds spent by or in support of candidate's ability to influence elections. The text of the amendment reads as follows:

'Section 1. To advance democratic self-government and political equality, and to protect the integrity of government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.

'Section 2. Congress and the States shall have power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.

'Section 3. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.'

 - a. Do you have any concerns with this amendment as drafted?
 - b. Would you agree with the ACLU, who has stated that "this and similar constitutional amendments would fundamentally break the Constitution and endanger civil rights and civil liberties for generations."
6. The President made the unilateral decision to delay the Affordable Care Act's employer mandate for one year despite clear statutory language instructing that the penalties associated with the mandate "shall apply 2 months beginning after December 31, 2013." This is just one example of the President unilaterally making changes to the law. One report says that the President has made 28 unilateral changes to the Affordable Care Act.
 - a. Do you believe that President Obama had the authority to delay the Affordable Care Act's employer mandate?
7. Exactly one year ago today, on February 5th, 2014, I submitted written question to Attorney General Holder following up on the Department of Justice oversight hearing that was held on January 29th, 2014. In order for Congress to effectively perform its oversight role, I believe there needs to be more timely responses to follow-up questions.

- a. If you are confirmed as Attorney General, do you commit to respond to Congressional questions in a timelier manner?

Hearing before the Senate Committee on the Judiciary
“Attorney General Nomination”
Questions for the Record Submitted by Senator Al Franken

Questions for Loretta Lynch:

Question 1. The Computer Fraud and Abuse Act (CFAA) has received attention for its potentially harsh penalties. In 2013, I wrote a letter to the Department of Justice expressing my concern about the way in which Aaron Swartz was aggressively prosecuted under the CFAA, and associating myself with a similar letter by Senator Cornyn. The Department’s response was, in short, that the prosecution of Swartz was consistent with the Act. Since then we have heard many people – from all over the political spectrum – call for reform of the CFAA. Recently, the White House announced a proposal to amend the Act. Some have characterized the proposal as a step in the wrong direction, noting – for example – that it would increase certain sentences. What is your assessment of these criticisms, and what is your opinion of the proposal?

Question 2. Last year, President Obama announced several reforms to the NSA’s surveillance programs. This included a new policy that permits companies to release certain, limited information about the number of National Security Letters they receive annually. The Attorney General was authorized to set guidelines on this new transparency provision. I was pleased to see transparency measures included in the reforms. As I have often noted, I believe increased transparency is needed so that the public has the information it needs to make informed judgments about these programs.

Unfortunately, the guidelines that were issued only allow companies to disclose broad ranges of the number of National Security Letters they have received, and do not allow companies to say if they have received no letters whatsoever.

Last Congress, we failed by a close vote to reach cloture on the motion to proceed to the USA FREEDOM Act, a major NSA surveillance reform bill. The bill included strong government transparency provisions, which I was proud to write with Senator Heller. Those provisions promised to give the American people important information about the numbers of Americans who had their information collected by the government under the different surveillance laws, and they would have allowed companies to make more significant public disclosures. Will you commit to reviewing DOJ’s transparency policies governing surveillance programs and consider issuing more robust guidelines?

SENATOR LINDSEY O. GRAHAM
FEBRUARY 5, 2015
U.S. SENATE COMMITTEE ON THE JUDICIARY
RE: LORETTA LYNCH'S NOMINATION AS ATTORNEY GENERAL

QUESTIONS FOR THE RECORD FOR MS. LORETTA LYNCH:

On National Security

1. At your confirmation hearing, I asked you if you thought the U.S. is at war. You responded: "We are at war, Senator." I have two follow up questions:
 - a. Do you believe the U.S. is at war with radical Islam?
 - b. What makes up the battlefield in this war?
2. Do you believe that, based on certain actions, a U.S. citizen can become an enemy combatant under the law of war?
3. If a U.S. citizen joins an enemy force, does the U.S. have the legal authority to detain that citizen as an enemy combatant under the law of war?
4. If a U.S. citizen joins an enemy force, does the U.S. have the legal authority to use lethal force against that citizen?
5. Do you think that the Military Commissions system is a viable forum to prosecute non-U.S. citizen unlawful enemy belligerents captured on the battlefield?
6. Prior to this current conflict, can you give me a case in U.S. history where an unlawful enemy belligerent, caught on a foreign battlefield, was tried in U.S. civilian court?
7. Do you think that non-U.S. citizen unlawful enemy belligerents captured on foreign battlefields should be afforded the same constitutional protections as common criminals apprehended in the U.S.?

On Online Gambling

1. On December 23, 2011, the Department's Office of Legal Counsel released an opinion holding that the Wire Act only prohibits online gambling as it relates to sporting events or contests, reversing the DOJ's long-held position that the Wire Act extends to all forms of gambling. Do you agree with this OLC opinion?
2. Do you believe the law is clear that the Wire Act extends only to sports bets or wagers?
3. In 2013, your office filed a civil forfeiture action which included as a predicate offense, the operation of gambling websites offering "casino games and sports betting" – websites your office claimed violate "multiple federal criminal statutes, including ... [the Wire Act] (making it unlawful to use a wire in connection with placing a bet or wager)"? *U.S. v. Two Million Eighty Thousand Dollars, et.al.*, CV 13-2077 (E.D.N.Y. April 9, 2013).

- a. If the law is clear that the Wire Act extends only to sports betting, why did your office not limit it to sports betting in its complaint, as quoted above?
 - b. On the other hand, if the law is not clear, was it appropriate for DOJ to overturn the law without consulting Congress, or seeking guidance from the courts?
4. The OLC lawyer who authored the opinion subsequently stated that “it is just that – an opinion.” Does the opinion carry the force of law?
5. Do you think it was appropriate for OLC to effectively open the door for states to offer Internet gaming without the involvement of Congress, the public, law enforcement, and state and local officials?
6. At your confirmation hearing, you agreed that online gambling could be used as a way to finance terrorist organizations. If confirmed, would you suspend or revoke the OLC opinion to give you a chance to review it, and give you and Congress time to work together to clarify the law?

On Office of Justice Programs

1. DOJ’s Office of Justice Programs (OJP) has consistently offered a competitive program for national organizations mentoring youth across America. This program defines national organizations as those serving youth in at least 45 states.
 - a. Does DOJ intend to change the criteria it currently uses under the Mentoring Program?
 - b. If so, what impact would this change have on national organizations the Mentoring Program has helped fund to date?

On Obscenity Laws

1. Do you believe the distribution and production of obscene material damages our communities?
2. The federal obscenity laws, 18 U.S.C. §§ 1460-1470, have been largely unenforced under the Holder DOJ. These laws prohibit the distribution and production of obscene material, and provide heightened penalties for the distribution and production of obscene material related to minors. If confirmed, do you intend to enforce these laws?

Senator Grassley, Chairman
Questions for the Record
Loretta Lynch
Nominee, to be United States Attorney General

1. As you know, the Senate is constitutionally obligated to fulfill its duty to provide advice and consent on the President's nominees. That process is always lengthy and involved, for good reason. It is of course especially important for the Senate to fulfill its responsibilities with care for Cabinet level positions, such as the Attorney General of the United States. Nonetheless, throughout this process, my primary concern is not only that your nomination was thoroughly vetted by the Senate, but also that throughout the process you were treated fairly and with respect. I have publicly outlined the process going forward in the Committee. Do you believe the United States Senate, and in particular the Senate Judiciary Committee, has treated you and your nomination in a fair and appropriate way?
2. Starting in 2010, the Department of Justice filed complaints against Arizona, Alabama, South Carolina, and Utah because of their pro-enforcement immigration laws. If confirmed, would you continue this policy of filing complaints against states that have passed such laws?
3. While the Department of Justice filed lawsuits against states that enacted pro-enforcement immigration laws, other cities enacted policies that expressly prohibited law enforcement from cooperating with the federal government on undocumented immigrant issues.
 - a. In your view, are sanctuary communities that ignore federal immigration detainers a threat to national security or public safety?
 - b. What steps would you take to encourage sanctuary communities to reverse their ordinances?
4. While sanctuary communities refuse to cooperate with the federal government, they continue to collect money from DOJ grant programs. Would you instruct the Department of Justice to withhold grant money for sanctuary communities that refuse to comply with our immigration laws?
5. The administration has acknowledged that over 36,000 convicted criminals were released from ICE custody in fiscal year 2013. Many of these criminals were guilty of heinous crimes, including homicide, sexual assault, abduction, and aggravated assault. Yet, Immigration and Customs Enforcement used its discretion and released these criminals back into the community. Do you believe the government, unless ordered by a court,

should release convicted criminal aliens guilty of dangerous crimes, homicide, sexual assault, abduction, and aggravated assault?

6. DHS cited the 2001 Supreme Court decision *Zadvydas v. Davis*, 533 U.S. 678 (2001), as another reason so many illegal aliens with criminal records were released. In *Zadvydas*, the court held that immigrants admitted to the United States who are subsequently ordered removed could not be detained for more than six months. Four years later, the Court extended this decision to people here illegally in *Clark v. Martinez*, 543 U.S. 371 (2005). Since *Zadvydas*, Congress has tried to pass legislation to require DHS to detain criminal aliens beyond six months. Would you support such legislation?
7. The Fourth Circuit Court of Appeals issued a decision in 2014 that provides a loophole for violent gang members who are here illegally to remain in the United States. In *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014), Martinez appealed a Board of Immigration Appeals decision that denied him “withholding of removal” relief because he was a former member of the violent MS-13 gang in El Salvador. The Fourth Circuit reversed the decision holding that Martinez’s former gang membership was “immutable” and met the “particular social group” element of the statute.
 - a. Do you agree that the Fourth Circuit decision creates a dangerous threat to national security?
 - b. After the Fourth Circuit handed down its decision, concern was expressed over the effect this decision could have on national security and public safety. Chairman Goodlatte of the House Judiciary Committee along with Representative J. Randy Forbes wrote a letter to Attorney General Holder to express their concern with the holding and ask whether he would appeal or seek review of the decision. However, Attorney General Holder did not appeal or seek review of this dangerous decision.
 - i. Would you agree that the DOJ, under Attorney General Holder, should have appealed the 4th circuit decision?
 - ii. Because the decision was not appealed, what, in your view, is the remedy for this problem?
8. The 287(g) program allows ICE to delegate some of its immigration enforcement authority to participating states. In 2012, ICE announced that it would no longer renew its 287(g) agreements stating, “other enforcement programs, including Secure Communities, are a more efficient use of resources.” However, Secure Communities serves a completely different function. The 287(g) program trains local officers to determine whether a person is lawfully in the country, whereas Secure Communities only allows local law enforcement to identify undocumented aliens after their

incarceration. Secretary Johnson has announced that the Secure Communities program is being discontinued, and replaced by another program. Consequently, statutory authority exists for the administration to elicit state and local cooperation with the federal government; nevertheless, this administration refuses to use it.

- a. Do you support the 287(g) program, and similar programs, that authorize the federal government to allow states to participate in enforcing federal law?
 - b. In your opinion, should the 287(g) program be made available to local law enforcement agencies that want to protect their communities and participate in immigration enforcement?
 - c. As states and local law enforcement approach you for help in enforcing federal law, will you find a way to work with them, or will you ignore them, as your predecessor has?
9. In June 2014, DOJ announced its program Justice Americorp will issue \$2 million in grants to lawyers to represent unaccompanied minors who crossed the borders illegally. Under current law, there is no right to a lawyer in a removal proceeding. The law provides only that an immigrant may obtain a lawyer, "at no expense to the government." Do you agree that the statutory language is clear: the government may not provide a lawyer to immigrants in a removal proceeding at the expense of the taxpayers?
 10. By its very nature, Justice Americorps has due process and equal protection issues. The Department is treating similar people in similar situations differently. How can the administration avoid due process and equal protection issues if it provides lawyers to some immigrants in removal proceedings, but not to others? Couldn't such a policy lead to the requirement of providing a lawyer to all immigrants in removal proceedings?
 11. Immigration is a civil proceeding, and as a constitutional matter, the government is not required to provide counsel in civil proceedings. Are you concerned that if the government starts providing counsel to individuals in removal proceedings, the government could be required to provide counsel in other civil proceedings?
 12. ICE has brought removal charges against only 143,000 of the 585,000 removable aliens encountered in fiscal year 2014. That's a mere 24 percent of removable aliens that ICE encountered in 2014. What's even more troubling is that nearly 900,000 aliens who have final removal orders still remain in the country. Now, however, all people with final removal orders are encouraged to seek deferred action and other relief made available through the President's recent executive action.
 - a. Do you support the administration's catch-and-release actions?

- b. Do you agree that individuals whom a judge has ordered removed, should, in fact, be removed?
13. Does the U.S. Constitution confer a right to abortion? If so, what clauses confer that right?
- a. Does the U.S. Constitution compel taxpayer funding of abortion? Why or why not?
 - b. Do you believe that the U.S. Constitution permits taxpayer funding of abortion? If so, based on what clause?
 - c. Does the U.S. Constitution prohibit informed-consent and parental involvement provisions for abortion? Why or why not?
14. In your view, is diversity a valid institutional interest for a government entity, consistent with the Equal Protection Clause? What other compelling justifications exist for government to make racial distinctions?
15. In *McCutcheon v. FEC*, Justice Breyer's dissenting opinion stated that "the First Amendment advances not only the individual's right to engage in political speech, but also the public's interest in preserving a democratic order in which collective speech matters" (emphasis in original).
- a. Do you agree that the First Amendment protects "collective" rights as well as individual rights?
 - b. If so, what other collective rights does the Bill of Rights protect?
16. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that a right to assisted suicide was not protected by the Due Process Clause. The Court reasoned: "[W]e have always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this uncharted area are scarce and open-ended. By extending constitutional protection to an asserted right or liberty interest, we, to a greater extent, place the matter outside the arena of public debate and legislative action. We must therefore 'exercise the utmost care whenever we are asked to break new ground in this field,' lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the members of this Court." Do you agree with the Court's assessment of the importance of public debate and legislative action?
17. Do you believe that the Supreme Court's decision in *Morrison v. Olson*, which ruled that the independent-counsel statute did not violate the constitutional separation of powers, was correctly decided? Please explain.

18. Do you believe that the Supreme Court's decision in *Boumediene v. Bush*, which conferred constitutional habeas rights to aliens detained as enemy combatants at Guantanamo, was correctly decided? If so, how does that square with *Johnson v. Eisentrager*, which Justice Scalia, in his *Boumediene* dissent, said "held—held beyond any doubt—that the Constitution does not ensure habeas for aliens held by the United States in areas over which our Government is not sovereign"?
19. What is your understanding of the constitutional duty of the Executive to "take Care that the Laws be faithfully executed" as contained in Article II, sec. 3 of the U.S. Constitution?
20. Do you believe that the Supreme Court's decision in *Zelman v. Simmons-Harris*, which held that school-choice programs that include religious schools do not violate the Establishment Clause, was correctly decided? Please explain.
21. The Supreme Court has held that the Federal Sentencing Guidelines are advisory and persuasive, but not binding. Do you believe *Booker* and *Fanfan* were correctly decided?
22. The U.S. Supreme Court has repeatedly upheld obscenity laws against First Amendment challenges. To my knowledge, not one new adult obscenity case has been initiated against commercial distributors of hard core adult pornography during the Holder years. Research has linked the consumption of obscenity to sexual exploitation and violence against women, and to demand for sex trafficking and child pornography. If confirmed, what is your commitment to vigorously enforcing the federal adult obscenity laws?
23. Do you think that it is constitutional for a university to have racially exclusive internships or scholarships or summer programs, as some have in the past? My question goes not go to racially preferential programs, but ones in which a person cannot even apply based on their color. The Supreme Court held in the *Grutter* and *Gratz* cases that schools cannot use race mechanically, but must give "individualized consideration" to students. How can a racially exclusive program provide students with individualized considerations?
24. Do you believe racial profiling in the context of the War on Terrorism is unconstitutional?
25. In his opening statement at the confirmation hearing of Alberto Gonzalez to be Attorney General, Senator Leahy remarked, "The Attorney General is about being a forceful, independent voice in our continuing quest for justice and in defense of the constitutional rights of every single American."

- a. Do you believe the Attorney General should be a forceful, independent voice for justice and in defense of the constitutional rights of all Americans? If so, how do you intend to accomplish this?
 - b. Can you provide examples of how you have been an independent voice during your government service? Are there any examples from your private practice?
26. The Affordable Care Act states that the employer mandate applied “after December 31, 2013.” Notwithstanding this clear statutory command, the President postponed the employer mandate. Furthermore, according to the Wall Street Journal, the President has delayed aspects of the law some 38 times.

Under our Constitution, the President must take care that the laws are faithfully executed. He can decide how to enforce the laws, but not whether to enforce them. What are the outer limits of the President’s authority to suspend, alter or otherwise change statutory language? What’s the limiting principle?

27. The President offered no legal support when he delayed the employer mandate despite the law. It is not clear if the Office of Legal Counsel did not review his action or could not offer legal support for it. In the Justice Department under Attorney General Holder, the Office of Legal Counsel has lost its former role as a guarantor that presidential acts are legal. Either it is not consulted, or the President takes action without seeking its approval, or the Office will not say “no” to illegal actions, or it issues cursory approvals like it did with an email when the President unilaterally released 5 terrorists from Guantanamo. Any of these possibilities is a threat to the rule of law.

What will you do to ensure that office objectively and thoroughly evaluates proposed presidential actions before they occur so the President conforms to the laws and the Constitution?

28. In 2008, the Justice Department brought suit against the New Black Panther Party and two of its members for voter intimidation. The defendants did not contest the claims. But when the Obama Administration took over, they would not allow career litigators to move for a default judgment. The career litigators have stated that political appointees would not allow a case to be brought against Black citizens for intimidation of White voters. Internal investigations of misconduct have led nowhere after all these years. The Civil Rights Commission has criticized the Department for not cooperating with its investigation into the matter.

- a. If confirmed, will you conduct a thorough and fair investigation of this matter and apply any appropriate disciplinary action?
- b. Is it your position that the Voting Rights Act applies in a race neutral way to voter intimidation?

29. The President remarked in his State of the Union address that voting should be as easy as possible. But fraud exists and it will get worse if the only response is denial. Not long ago, the Pew Center on the States issued a report that found there are 24 million voter registrations in this country that are no longer valid or are inaccurate. It concluded that there are almost 3 million individuals who are registered to vote in multiple states. Tens of thousands are registered to vote in three or more states.

The study also identified close to 2 million dead people on the voter rolls. NBC News found 25,000 names of likely deceased voters on the California rolls. Some voted years after they died. One woman who died in 2004 voted in 2008 and 2012. A man who died in 2001 has voted eight times since 2005. The New York Times has written that in Florida, “absentee ballot scandals seem to arrive like clockwork....”

Do you agree that voter fraud is a significant problem? Do you agree that the states should be allowed to take actions, such as requiring voters to show photo identification, especially when there is no charge for obtaining that identification, to ensure the integrity of the voting process without running afoul of the Justice Department’s Civil Rights Division?

30. Voter fraud also includes the registration to vote and illegal voting by people who are ineligible to vote. That means that the right to vote is being diluted by illegal votes canceling legal ones. In Iowa, a state investigation from 2012 to 2014 identified 117 illegal votes that were cast. The Secretary of State’s investigation of these cases resulted in 27 criminal charges against suspected fraudulent voters and six criminal convictions. The three categories of illegal votes cast were from non-citizens, felons whose right to vote had not been restored, and miscellaneous offenses. Investigators were careful and determined that about half of the suspected non-citizen voters were actually citizens. But 88 cases were turned over to county attorneys and at least 10 of these cases have resulted in charges. The evidence of care in the investigation was demonstrated in the 16 cases brought against felons whose right to vote had not been restored, while 20 felons were identified whose rights should have been restored but had been denied when trying to vote. And there were 100 instances in which voters in Iowa also cast ballots in the same election in another state.

There is much voter fraud if only election and law enforcement officials will actually seek it. That many prosecutors do not search for it does not mean it does not exist. The public needs confidence in the integrity of its elections, and that only eligible voters actually vote.

If you are confirmed, what would you plan to do to stop voter fraud?

31. The Obama Administration has sought to ban the importation of shotguns and ammunition. The Administration has even argued that shotguns lack any sporting purpose.
- a. Do you agree that shotguns do not have any sporting purpose and that their importation should be banned?
 - b. Federal law requires the attorney general to determine whether or not certain types of firearms have a “sporting purpose” before they can be lawfully imported or sold. How is this consistent with the core purpose of the Second Amendment, which, according to the U.S. Supreme Court, is self-defense?
32. The Justice Department is tasked with maintaining two important criminal databases. One is used when a Brady Act criminal background check is conducted on a prospective gun purchaser. The other is used by employers to check the criminal history of job applicants they intend to hire. These databases depend on records provided by the states that reflect criminal cases. Both databases have inaccuracies that cause serious problems. For instance, people convicted of domestic violence aren’t allowed to purchase firearms. But many states have submitted none or very few records of such convictions. A background check for someone from these states won’t keep a convicted domestic abuser from buying a gun.
- Similarly, states have done a poor job with the records that are used for employment checks. Today, 32% of adult Americans have a criminal record, either a conviction or an arrest. The database contains many arrests that never led to any conviction. But when a search is done, those arrests come up, and the person may be denied a job as a result. If confirmed, what will you do to improve the accuracy of the records in these databases?
33. One of the bills proposed in Congress and in a number of states would expand existing background check requirements that currently pertain to licensed retail sales of firearms to all firearm transfers. If such a bill were enacted, how would DOJ enforce it in the majority of states where firearms are not licensed or registered to specific individuals?

34. Do you believe the Supreme Court correctly decided *District of Columbia v. Heller*? Do you believe the individual right to keep and bear arms is a fundamental right?
35. The Supreme Court held in *Heller* that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." In 2009, the U.S. Supreme Court expanded that right in *McDonald v. Chicago* by finding that the Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment. What is your personal opinion of the rights afforded by the Second Amendment?
36. A bipartisan consensus is growing in Congress that civil asset forfeiture has increased incentives for abuse. In that process, law enforcement can seize property without any finding that the person has committed a crime. And financial incentives exist for law enforcement to pursue asset forfeiture aggressively—maybe too aggressively.

Recently, Attorney General Holder accepted the proposal that I and several members of Congress asked of him: to eliminate adoptive seizures and equitable sharing. Under those procedures, state and local law enforcement had incentives to pursue seizures to keep the money for their own use. However, Attorney General Holder's order still permits equitable sharing when state and local authorities work with federal law enforcement in a joint task force, and in joint federal-state operations.

I do not read these exceptions as narrowly as you characterized them at the hearing. For instance, I am not aware that an actual case must be filed for them to apply.

- a. Haven't a large number of investigations in your office been conducted through a joint task force or joint federal-state operation? And doesn't the exception for equitable sharing for these operations swallow this rule? What would happen if a state law enforcement officer saw a car that it suspected had cash obtained from drug trafficking and called a DEA agent, asking whether the local agency and DOJ jointly combated drugs?
 - b. Are further reforms necessary for asset forfeiture, and will you commit to working to supporting legislation to prevent injustice and enhance procedural rights in this area?
37. The Justice Department did not, in the words of the New York Times, "prosecute a single prominent banker or firm in connection with the subprime mortgage crisis that nearly destroyed the economy." I am concerned that this will happen again if DOJ does not hold the perpetrators responsible. Many people were prosecuted in connection with the failed savings and loan scandals of the 1990s.

- a. Why did the Department of Justice fail in bringing these criminals to Justice? Do you believe this impedes its ability to credibly deter others from committing similar crimes in the future?
- b. If confirmed, what will you do to pursue prosecution for any of these crimes that are still within the statute of limitations?

38. As U.S. Attorney for the Eastern District of New York, you helped secure nearly \$2 billion from HSBC over its failure to establish proper procedures to prevent money laundering by drug cartels and terrorists. You were quoted in a DOJ press release saying, "HSBC's blatant failure to implement proper anti-money laundering controls facilitated the laundering of at least \$881 million in drug proceeds through the U.S. financial system."

You stated that the bank's "willful flouting of U.S. sanctions laws and regulations resulted in the processing of hundreds of millions of dollars in [Office of Foreign Assets Control]-prohibited transactions." Still, no criminal penalties have been assessed for any executive who may have been involved.

- a. Did you make any decision or recommendation on charging any individual with a crime?
 - i. If so, please describe any and all decisions or recommendations you made.
 - ii. Please explain why such decisions or recommendations were made.
- b. If you did not make any decision or recommendation on charging any individual with a crime, who made the decision not to prosecute?

39. Recent press reports have tracked the disturbingly large numbers of witnesses in federal criminal cases who have been murdered to prevent their testimony. It is often difficult to get witnesses to testify against dangerous criminals. They rightly fear for their safety and the Justice Department has to ensure they are protected.

I know that sometimes witnesses decline protection. And sometimes protected witnesses ignore sound advice to stay away from their former residences to avoid the defendant and others. But it is clear that the Department is not offering protection to quite a few witnesses who need it.

And I am particularly incensed that on several occasions, when the Department has confidentially informed defense counsel in advance of trial who a witness will be, defense counsel have tipped off their client, who then appear to arrange for the witness to be murdered.

If confirmed, what will you do as Attorney General to make sure that witnesses who need protection receive it? Will you ensure that federal prosecutors seek protective orders to relieve them of the obligation of disclosing the names of vulnerable witnesses to defense counsel?

40. Increasingly, law enforcement is using drones for domestic law enforcement purposes. Drones enable more surveillance of citizens to occur. They are more mobile. They are cheaper to pay than police officers. And they can hover over homes and peer through windows, observing what humans cannot.

I am concerned that as law enforcement employs more drones, the security of the people in their persons, papers, and effects could be compromised. Meanwhile, despite a hearing the Judiciary Committee held, the Justice Department has not issued any guidelines on how the Fourth Amendment's prohibition on unreasonable searches and seizures, and its warrant requirement, apply to drones.

If confirmed, will you commit that the Department of Justice will issue specific guidelines on how the Fourth Amendment restricts law enforcement's domestic use of drones?

41. The House Oversight and Government Reform Committee issued a report last year finding that a banking enforcement program involving DOJ is in fact aimed at depriving legal but politically-disfavored business sectors of access to the financial services businesses need to survive in the modern economy. The name of the program is Operation Choke Point. You were asked about Operation Choke Point at your hearing, but you seemed unfamiliar with the fact that the program's targets include legal sellers of firearms and ammunition, among other industries. Internal investigators at both DOJ and FDIC are conducting formal inquiries into the program and the officials and employees involved.

- a. Would you agree that DOJ should not use its authority to discourage legal enterprises from operating, even if some administration officials consider them "morally unacceptable"?
- b. Would you support appointment of a special counsel to hold accountable any DOJ official who is found to have abused his or her authority under this program to close down lawful businesses?

42. On Election Day last year—3 years after the House subpoena was issued and 2 years after the contempt vote—Attorney General Holder finally delivered 64,000 pages of documents to the House. Those documents were only provided to the House. The Justice Department failed to deliver them to this Committee, despite the agreement I made with

Attorney General Holder to release my hold on Deputy Attorney General Cole's nomination. The Senate Judiciary Committee was supposed to receive all the same Fast and Furious documents delivered to the House throughout the investigation. The subpoena is still being litigated, so the court may order more documents to be provided in the future.

Will you commit that, if confirmed, you will ensure that this committee receives any future Fast and Furious documents provided in the litigation with the House?

43. The Department has argued in the Fast and Furious litigation that executive privilege is more than just a Presidential privilege, but that it also establishes a constitutional shield for the “deliberative process” of lower level agency officials. However, the deliberative process privilege is traditionally a common law doctrine and one of the exemptions in the Freedom of Information Act—not a constitutional privilege of equal standing with the inherent Constitutional power of Congress to conduct oversight inquiries. Deliberative process also traditionally applies only to content that is deliberative and pre-decisional.¹ It does not shield material created after a decision is made, or that is purely factual.

Moreover, the Attorney General has sought to use this exceedingly broad notion of privilege to justify withholding documents that he has stated *are not privileged*. On November 15, 2013, the Attorney General acknowledged in the Fast and Furious litigation that he was withholding documents responsive to the House subpoena that “do not . . . contain material that would be considered deliberative under common law or statutory standards.”² Furthermore, the OLC opinion on the President’s assertion of executive privilege suggests that the privilege applies “*regardless* of whether a given document contains deliberative material.”³

Yet, the Department *did* produce deliberative, pre-decisional material prior to the Feb. 4, 2011 gunwalking denial letter to me, despite its claim now that such material is privileged. The Department conceded that Congress had a clear interest in finding out whether officials knew before it was sent that the Feb. 4th letter was false. It provided pre-Feb. 4th material—even though it was pre-decisional and deliberative. However, the Department still refuses to concede that Congress has an interest in discovering how officials learned that the letter was false *after it was sent*. It refused to provide post-Feb. 4th material—even though it is post-decisional and factual in nature. The Department categorically withheld *all* records from after the Feb. 4th letter until Election Day 2014.

¹ *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

² Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

³ 36 Op. O.L.C. 1, 3 (June 19, 2012) (emphasis added).

Only then, after a court order, did it finally produce to the House Committee post-Feb. 4th documents that contained purely factual, post-decisional material.

- a. What is the scope of executive privilege, particularly over agency documents unrelated to the President?
 - b. Does the President have an executive privilege to withhold documents subpoenaed by Congress that have nothing to do with advice or communications involving the White House? If so, what is the legal basis for that claim?
 - c. Congress created a statutory deliberative process exemption for documents subject to Freedom of Information Act requests. Do you believe a similar exception applies to congressional subpoenas, or are requests from Congress entitled to more weight?
 - d. Are deliberative documents just as immune from Congressional scrutiny as they are from FOIA requestors?
 - e. Can the President assert executive privilege over deliberative material, as the Office of Legal Counsel opinion suggested, “regardless of whether a given document contains deliberative content,” and even where the material is post-decisional?
 - f. The OLC opinion also claims that providing Congress with non-deliberative or purely factual agency documents would raise “significant separation of powers concerns.” Do you agree, and if so, why?
 - g. Given that non-deliberative, purely factual agency documents are clearly not considered part of any protected “deliberative process” under common law or statute, what is the legal justification for withholding such documents under Congressional subpoena?
44. In the Fast and Furious litigation, the Department has relied on an extremely broad notion of executive privilege in its refusal to produce non-deliberative, post-decisional documents that would help Congress understand when and how the Department came to know that its Feb. 4, 2011 letter to me denying gunwalking was false. Specifically, the Department categorically refused, until Election Day last year, to produce *64,000 documents*—even though the Attorney General recognized that at least some of those documents “[did] not . . . contain material that would be considered deliberative under common law or statutory standards.”⁴ The OLC opinion on the matter suggests that assertion of privilege is proper “regardless of whether a given document contains deliberative material.”⁵
- The Department relied on this overbroad view of executive privilege when it declined to bring the congressional contempt citation of Attorney General Holder before a grand jury.⁶ The Department sent this denial letter to the Speaker of the House before the

⁴ Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

⁵ 36 Op. O.L.C. 1, 3 (Jun 19, 2012).

⁶ Letter from Senator Charles E. Grassley to U.S. Attorney Ronald Machen (June 29, 2012), at 2.

contempt citation even reached the U.S. Attorney.⁷ The U.S. Attorney failed to answer my questions seeking an explanation of the facts and circumstances sufficient for Congress to determine whether he made an independent judgment regarding the refusal to present the citation.⁸

The law states that it is the “*duty*” of the U.S. Attorney “to bring the matter before the grand jury for its action.”⁹

- a. What does it mean for the U.S. Attorney to have a “*duty*” to present a congressional contempt citation to a grand jury?
 - b. If the U.S. Attorney has any discretion in cases where there is a claim of Executive Privilege, does he also have an obligation to make an independent evaluation of such a claim? If not, please explain why not.
 - c. Under the Department’s interpretation of the statute, what is left of the Congressional contempt power against any agency able to convince the President to assert executive privilege?
 - d. Under the Department’s interpretation of the statute, what safeguards against a President’s improper claims of executive privilege if not the independent legal judgment of the U.S. Attorney charged by statute with presenting the contempt citation to a grand jury?
 - e. The Department relies on its own OLC opinions, which claim, among other things, that the Department should not prosecute officials for contempt at least in part because Congress can resort to civil litigation to enforce its subpoenas. However, it is clear from the delays in the Fast and Furious litigation that this enforcement tool is insufficient to ensure that Congress has adequate access to information to carry out its oversight responsibilities. The House Committee has had to re-issue the subpoena twice to avoid the case being mooted at the beginning of each new Congress. This gives the impression that the Department is delaying the process in hopes that political events may allow it to avoid a judicial resolution. What steps would you take to counter that appearance and resolve the dispute in a more timely way?
45. If confirmed, will you pledge to personally re-evaluate the Department’s litigation strategy in the fast and furious matter, the merits of its positions, and refusal to settle the case up to this point—and provide your conclusions to this Committee?

⁷ *Id.* at 1.

⁸ *Id.* at 1-2.

⁹ 2 U.S.C. § 194 (emphasis added).

46. Josephine Terry sent a letter to you dated January 26, 2015, informing you that Department of Justice officials had lied to her regarding the source of the weapons found at her son's murder scene and withheld key information from the lead FBI investigator on the case. In spite of the findings and recommendations by the DOJ OIG and the ATF Professional Review Board, many of the officials involved remain employed by the Department or ATF. Ms. Terry asks that you review the conduct and performance of those officials and examine whether the ATF obstructed the FBI's investigation of her son's murder.

As Ms. Terry asks:

- a. Will you "review the conduct and performance of the Justice Department and ATF . . . to determine whether the discipline or other administrative action with regard to each employee was appropriate"?
- b. "[I]f ATF's Professional Review Board did in fact recommend certain discipline such as termination for certain employees, [will you] determine why this has not occurred"?
- c. Ms. Terry also asks about evidence that officials may have initially concealed from the FBI agent investigating her son's murder the fact that the weapons found at the scene traced back to Fast and Furious. Do you agree with Ms. Terry that, if this is true, these officials may have hindered and obstructed a federal criminal investigation? If so, and if confirmed, will you look into it? If not, please explain why not.

47. In November 2014, the Department delivered to the House 64,000 pages of documents related to Fast and Furious that it had withheld for three years, even though the Attorney General admitted that they were not all privileged. One of the documents is an email that shows that the Justice Department and the White House press offices attempted to stop CBS News from reporting on Fast and Furious.

In an email dated October 4, 2011, the Attorney General's top press aide, Tracy Schmalzer, claimed that CBS News reporter Sharyl Attkisson was "out of control."¹⁰ The Attorney General's press aide also told White House Deputy Press Secretary Eric Schultz that she planned on calling CBS News anchor Bob Schieffer to pressure the network to block Ms. Attkisson's Fast and Furious reporting. The White House Deputy Press Secretary replied, "Good. Her piece was really bad for the AG."

¹⁰ E. Schulz and T. Schmalzer e-mail chain (Oct. 4, 2011), available at <http://www.judicialwatch.org/document-archive/control/>; see also K. Pavlich, Document Dump Shows DOJ Worked With White House To Target 'Out of Control' Sharyl Attkisson For Fast and Furious Coverage, Townhall.com (Nov. 21, 2014).

The White House Deputy Press Secretary also told Attorney General Holder's press aide that he was working with reporter Susan Davis to target Rep. Darrell Issa. In the same email chain, the White House Deputy Press Secretary tells Attorney General Holder's press aide that he would provide Susan Davis with "leaks." Ms. Davis wrote a critical piece on Representative Issa a few weeks later.

Ms. Attkisson also testified before the Committee that the Department physically barred her from attending a Fast and Furious briefing in a public building, while handpicking other reporters who were allowed to get past building security for the briefing.

- a. Do you believe the job of the taxpayer-funded press office at the Department of Justice should include pressuring networks not to run news stories that the Attorney General does not like?
 - b. Is it appropriate for that press office to coordinate with the White House on "leaks" of negative information about a Committee Chairman conducting aggressive oversight of the Justice Department?
 - c. If confirmed, what would you do to curb this kind of activity in your press office?
48. If confirmed, what steps would you take to ensure that reporters are not barred from briefings simply because they report on stories unfavorable to the Attorney General?
49. On December 30, 2014, former CBS News reporter Sharyl Attkisson — who reported on Operation Fast and Furious and Benghazi — filed a complaint in court alleging that the government had conducted "unauthorized and illegal surveillance" of her computers and telephones.¹¹ It is unclear so far whether the surveillance was conducted by the government, but it does seem clear that there was a hack of her CBS computers. CBS News issued a press release confirming that there was a hack.¹²

Ms. Attkisson's complaint alleges that her forensics experts found that propriety federal government software had been used to accomplish an intrusion on her work computer, though that is unconfirmed.¹³ In addition, both her work and personal computers allegedly showed evidence of attacks that were coordinated and highly-skilled.¹⁴ Ms. Attkisson filed a complaint with DOJ-OIG and the FBI regarding this matter, but the FBI never even interviewed her about her claim.¹⁵

¹¹ Complaint at ¶ 1, *Attkisson v. Holder*, 2014-CA-8321 (D.C. Super. Ct. Dec. 30, 2014).

¹² See E. Wemple, CBS News confirms multiple breaches of Sharyl Attkisson's computer, Washington Post Blog (June 14 2013).

¹³ Compl. ¶ 44.

¹⁴ *Id.* ¶ 45.

¹⁵ *Id.* ¶¶ 47, 54; L. Grove, Ex-CBS Reporter Sharyl Attkisson's Battle Royale With the Feds, The Daily Beast (Jan. 9, 2015).

In a letter to Sen. Coburn, DOJ sought to blame Ms. Attkisson for failing to “follow up” with the FBI regarding her complaint.¹⁶

Ms. Attkisson also has filed a FOIA request with the FBI, and received only a few pages in response so far. The documents indicate knowledge of the hack, but it is unclear what, if any, investigative steps the FBI took to pursue a case.

- a. Given the growing importance of cybersecurity as a priority for the Department and the chilling effects that politically motivated hacking could have on the First Amendment activities of news organizations, do you believe the FBI should find out who hacked into CBS News, regardless of who is responsible?
 - b. In light of the allegation that a government agency or a contractor for a government agency may be responsible, if confirmed, what steps would you take to ensure that there is a thorough and independent investigation of the CBS hack?
 - c. If confirmed, how would you deal with the inherent conflict in the Department’s interest in both defending itself against litigation alleging some government liability and its interest in ensuring that there is a thorough and independent inquiry to find out who was responsible for the CBS hack?
 - d. The Department also has allegedly failed to respond to related FOIA requests in a timely and appropriate way. If confirmed, will you pledge to re-evaluate the Department’s FOIA responses on this matter to date and seek to avoid costly FOIA litigation by being as transparent as possible? If not, please explain why not.
 - e. If confirmed, will you cooperate fully with this committee’s inquiry into the Department’s response to the CBS hack— including providing internal documents about efforts to find out who was responsible? If not, please explain why not.
50. The FBI is exempt from the normal protections that apply to other law enforcement agencies under the Whistleblower Protection Act.¹⁷ Operating outside of the traditional whistleblower protection framework, the Department’s record of actually guarding whistleblowers from retaliation is historically weak.

For example, regulations designate specific individuals to whom FBI employees may make protected disclosures.¹⁸ Those individuals include

the Department of Justice’s (Department’s) Office of Professional Responsibility (OPR), the Department’s Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR), the FBI Inspection Division (FBI-INSD) Internal Investigations Section

¹⁶ Letter from P. Kadzik to T. Coburn (Dec. 12, 2013), at 2.

¹⁷ 28 C.F.R. Part 27.

¹⁸ 28 C.F.R. § 27.1(a).

(collectively, Receiving Offices), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office¹⁹

The regulations do *not* protect whistleblowers from retaliation when they make initial disclosures of wrongdoing to their direct or immediate supervisors.

In 2012, the President tasked the Attorney General to report on the effectiveness of the FBI whistleblower regulations.²⁰ The Department submitted its report a year late.²¹

In that report, the Department noted that of 89 reviewed cases of whistleblower complaints, 69 were found to be “non-cognizable.” Further, a “significant portion” of those deemed “non-cognizable” involved disclosures that were “not made to the proper individual or office under 28 C.F.R. § 27.1(a).”²²

The Department recommended expanding the number of designated officials to whom whistleblowers may make a protected disclosure, but only to include the second-in-command of a field office, such as the Assistant Special Agent in Charge of a smaller field office or the Special Agent in Charge of a larger field office.²³ The Department declined to expand the category of designated officials to include an employee’s direct or immediate supervisor, even though, as the Department noted, “OSC believes that to deny protection unless the disclosure is made to the high-ranked supervisors in the office would undermine a central purpose of whistleblower protection laws.”²⁴

Notably, PPD-19 specifically defined a “protected disclosure” within the intelligence community, of which the FBI forms a part, as “a disclosure of information by the employee to a supervisor in the employee’s direct chain of command *up to and including* the head of the employing agency”²⁵ The FBI thus remains the *only agency* in the Executive Branch that does not protect disclosures made by employees to their direct or immediate supervisor.

Unfortunately, this inadequate regulatory framework is not the sole culprit for the weak protections afforded to FBI whistleblowers. I have personally spoken to current and former FBI employees whose cases languished anywhere between *nine and eleven years*

¹⁹ *Id.*

²⁰ The White House, Presidential Policy Directive/PPD-19 (Oct. 10, 2012), at 5 [“PPD-19”].

²¹ Department of Justice Report on Regulations Protecting FBI Whistleblowers (Apr. 2014) [“DOJ FBI Whistleblower Report”].

²² DOJ FBI Whistleblower Report at 7.

²³ *Id.* at 13.

²⁴ *Id.* at 14.

²⁵ PPD-19 at 7 (emphasis added).

before those employees won relief for retaliatory acts and practices committed against them for reporting waste, fraud, and abuse in the FBI.

- a. Why shouldn't whistleblowers in the FBI who report waste, fraud, and abuse to their direct supervisors be protected?
- b. Do you believe that there is anything unique about the FBI that suggests its policy on this issue should be different from the rest of the law enforcement and intelligence communities? If so, please explain why.
- c. If confirmed, will you commit to personally reviewing any changes the Department makes to its policies and procedures in handling FBI whistleblower complaints?
- d. If confirmed, will you provide this committee with regular updates on the Department's progress in improving the effectiveness and timeliness of its policies and procedures for addressing these claims?

51. On September 5, 2014, I wrote to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Office of Justice Programs (OJP) regarding allegations that OJJDP knowingly granted millions of taxpayer dollars to states that incarcerated runaway youth, foster youth, and other vulnerable minors in violation of the Juvenile Justice and Delinquency Prevention Act (JJDP). OJJDP's responses to my inquiry confirmed whistleblowers' accounts of compliance monitoring failures at OJJDP.²⁶ The Inspector General has also detailed some of these failures in a January 2014 report.²⁷

The core problem appears to be OJJDP's failure to understand or implement its separate and distinct compliance monitoring obligations under the law:

- OJJDP is required to reduce a state's funding for a given year by 20 percent for each core requirement violated in the previous fiscal year.²⁸
- OJJDP is *also* required to ensure that such a state does not receive *any* JJDP funds for the year, unless that state meets one of two criteria, including a showing of subsequent, substantial compliance with the requirement(s) it was violating.²⁹

Yet, OJJDP has admitted and defended a policy that appears to conflate these two obligations, by allowing non-compliant states to avoid the 20 percent reductions so long

²⁶ Letter from Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary, to Hon. Karol Mason, Assistant Attorney General, U.S. Department of Justice (January 14, 2015), <http://www.grassley.senate.gov/sites/default/files/news/upload/CEG%20to%20OJP%20%28JJDP%20Act%20Grant%20Fraud%29%2C%201-14-15.pdf>.

²⁷ *Id.*

²⁸ 42 U.S.C. § 5633 (c)(1).

²⁹ 42 U.S.C. § 5633 (c)(2). Significantly, subsections (c)(1) and (c)(2) are conjoined by the operative "and."

as they are able to demonstrate subsequent, substantial compliance with the non-compliant requirement(s).³⁰

Moreover, OJJDP admitted that “this [policy] does not appear to have been reduced to writing” even though “it has been the common practice since at least 1986.”³¹ In addition, OJJDP explained that “[it] has not historically maintained a comprehensive record of all communications with the 55 participating states and territories.”³²

This gives rise to a concern that this policy, questionable on its face, may be arbitrary as applied. Moreover, there is a growing concern as to just how many taxpayer dollars OJJDP has awarded to states that imprisoned vulnerable youth in violation of the JJDPA since then.

- a. Do you agree that it is an inappropriate use of taxpayer dollars to reward states that lock up foster youth and runaways in violation of the Juvenile Justice Delinquency Prevention Act?
- b. If confirmed as Attorney General, will you personally look into this issue and cooperate fully with our inquiry—including ensuring that the replies to our letters are timely?

52. In 2013, the Government Accountability Office (GAO) reported that Attorney General Holder took 366 flights for non-mission purposes aboard Department aircraft at a cost of \$5.8 million.³³ This report also states that in 2009 the FBI stopped reporting to the General Services Administration (GSA) flights taken by senior federal officials aboard its aircraft, although reporting is required by Office of Management and Budget (OMB) Circular A-126.³⁴ Circular A-126 states that agencies must report semiannually to GSA each use of such aircraft for non-mission travel by senior executives.³⁵

- a. As it stands now, the Department does not report the Attorney General’s travel as other agencies do under OMB Circular A-126. If you were confirmed as Attorney General, would you commit to publicly reporting the amount of your travel on FBI jets? If not, why not?

³⁰ Letter from Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, Office of Legislative Affairs, to Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary (October 28, 2014).

³¹ Email from U.S. Department of Justice, Office of Legislative Affairs, to Staff of Sen. Charles E. Grassley, Ranking Member, and Sen. Patrick J. Leahy, Chairman, S. Comm. on the Judiciary (November 21, 2014).

³² *Id.*

³³ GAO, *Executives’ Use of Aircraft for Nonmission Purposes*, GAO-13-235 (Washington, D.C.: February 2013).

³⁴ *Id.*

³⁵ *Id.*

- b. If confirmed, would you limit your travel in order to save taxpayer money and ensure that the FBI aircraft are always available for counter-terrorism operational flights? If not, why not?
- c. If confirmed, would you be willing to develop internal guidance or policies that would help guide and regulate the extent to which “required use” travelers do not inappropriately or overly use government aircraft for personal reasons? If not, please explain why.

53. Although administrative leave is not authorized by statute, precedent allows it as an exercise of agency discretion, but only for occasional, short periods of time and only when it is in the best interests of the taxpayer.³⁶ In a 2002 Department of Justice (DOJ) memorandum on administrative leave, DOJ acknowledged that “components too frequently are placing employees on administrative leave rather than utilizing other more appropriate options.”³⁷ As a result, DOJ changed its policy to limit the use of

³⁶ To the Chairman, U.S. Civil Service Commission, 38 Comp. Gen. 203 (1958) (where removal of an employee is necessitated by safety concerns, only 24 hours administrative leave is appropriately authorized, and extensive paid leave pending an investigation does not qualify as a proper use of “administrative leave,” but rather “immediate” steps should be taken to reduce time during which an employee is on paid leave); Navy Department-Reduction In Force-Administrative Leave During 30-Day Notice Period, 66 Comp. Gen. 639, 640 (1987) (holding that decisions of the Comptroller General and the guidelines of the Office of Personnel Management limit an agency’s discretion to grant administrative leave to situations involving brief absences); Ricardo S. Morado – Excused Absence, 1980 WL 17293, 1 (1980) (when it became clear that an employee would not be returning to work, an agency was not authorized to grant administrative leave pending the separation); Miller v. Department of Defense, 45 M.S.P.R. 263, 266 (MSPB, 1990) (a settlement agreement was declared invalid as the Merit Systems Protection Board determined that the Department of Defense did not have the authority to grant an employee nine months of paid administrative leave, where said employee was to be removed at the end of the period of administrative leave, because there was no statutory provision that authorized the agency to grant paid administrative leave for such an “extended period of time”); *pet. for rehearing denied by Miller v. Dept of Defense*, 1992 U.S. App. LEXIS 2457 (Fed. Cir. Feb. 18, 1992); In the Matter of the Grant of Administrative Leave Under Arbitration Leave, 53 Comp. Gen. 1054, 1056-57 (the Comptroller General refused to grant an employee thirty days of administrative leave, where that employee was injured on the job and unable to work in his full capacity, as the grant of administrative leave constituted an “extended period of excused absence” that was not permitted under any statute); Nina R. Mathews-Age Discrimination/Title VII Resolution Agreement-Compensatory Damages, 1990 WL 278216, 1-2 (where an employee was granted twenty-two weeks of administrative leave pay in settlement of a personnel claim, the agreement was deemed invalid by the GAO, as the Comptroller determined that there was no relevant legal basis by which the employee could be placed on extended administrative leave with pay); Excused Absence for Bar Examination Preparation, 1975 WL 8763, 1 (1975) (periods of 14, 28 and 31 days did not constitute “periods of brief duration” under which an agency had authority to grant administrative leave for employees to take their Bar examinations); Department of Housing and Urban Development Employee-Administrative Leave, 67 Comp. Gen. 126, 128 (1987) (The Comptroller General held that the agency’s “decision to allow the employee to participate in a NIH therapeutic trial for 3 days a month in a cancer research effort being run by the National Cancer Institute is consistent with the broad framework of decisions of this Office and the FPM Supplement addressing the discretionary agency review of administrative leave requests”); Frederick W. Merkle, Jr. – Administrative Leave, 1980 WL 14633, 1 (1980) (an eight-week period could not constitute administrative leave for an employee awaiting a decision on his eligibility for early retirement, as it constituted an “extended period of time”); Gladys W. Sutton-Administrative Leave in Lieu of Leave Without Pay, 1983 WL 27142, 1 (a five-week period constituted an “extended period” where administrative leave could not be properly granted by an agency so that an employee could preserve her eligibility for a discontinued service retirement program).

³⁷ Diegelman, R. *Proper Use of Administrative Leave* [Memorandum]. (Washington, DC: September 27, 2002) Department of Justice

administrative leave to 10 work days unless approved by the assistant attorney general for administration or his designee for a longer period.³⁸

However, an October 2014 Government Accountability Office (GAO) report found that from fiscal years 2011 to 2013, DOJ placed 1,849 employees on paid administrative leave for one month to one year.³⁹ The average number of days on administrative leave for these 1,849 employees was 38 days, which is significantly higher than the 10 work day limit stated in DOJ policy.⁴⁰ Moreover, 23 employees were on paid administrative leave for six months or more.⁴¹ It appears that DOJ is approving much more administrative leave than its policy suggests is appropriate.

In November 2014, I wrote Attorney General Holder about this issue. Given significant costs to the taxpayer for salaries and benefits and the fact that DOJ has an administrative leave policy that purports to limit its use to 10 days or less absent unusual circumstances—it is unclear why so many DOJ employees are taking so much administrative leave.

- a. If confirmed, how would you ensure that the Department actually limits its use of administrative leave?
- b. How would you strengthen the Department's 10-day administrative leave policy to ensure that DOJ employees are not sitting at home for a six months or more collecting a check for not working?
- c. If confirmed, will you to respond to my letter promptly and thoroughly so that this Committee can examine the detailed facts and circumstances that led to each of these employees being on leave for such extended periods of time?

54. On November 19, 2013, and again on September 9, 2014, Inspector General Michael Horowitz testified that the Department is improperly impeding his access to grand jury records, Title III electronic surveillance documents, and Fair Credit Reporting Act consumer credit information.⁴²

³⁸ *Id.*

³⁹ GAO, *Use of Paid Administrative Leave*, GAO-15-79 (Washington, D.C.: October 2014).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² U.S. Senate Committee on Homeland Security and Government Affairs, Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce; *Strengthening Government Oversight: Examining the Roles and Effectiveness of Oversight Positions Within the Federal Workforce*, (November 19, 2013) [hereinafter Senate Homeland Security Hearing]; <http://www.hsgac.senate.gov/subcommittees/fpfw/hearings/strengthening-government-oversight-examining-the-roles-and-effectiveness-of-oversight-positions-within-the-federal-workforce>; accessed March 5, 2014; see also U.S. House of Representatives Committee on the Judiciary: *Access to Justice?: Does DOJ's Office of Inspector General Have Access to Information Needed to Conduct Proper Oversight?* (September 9, 2014); <http://judiciary.house.gov/index.cfm/2014/9/hearing-access-to-justice-does-doj-s-office-of-inspector-general-have-access-to-information-needed-to-conduct-proper-oversight>; accessed September 23, 2014.

Recognizing that Inspectors General cannot fulfill their statutorily-mandated duty to conduct oversight without access to Department records, Section 6(a)(1) of the Inspector General Act authorizes Inspectors General to access:

all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishment which relates to programs and operations with respect to which that Inspector General has responsibilities under this Act.⁴³

In certain limited circumstances, the law does allow the Attorney General to “prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena.”⁴⁴ However, the Attorney General is required to provide written notice to the Inspector General of the reasons for doing so and to forward a copy of that written notice to Congress.⁴⁵

Yet, the statutory procedure for written notice by the Attorney General and a report to Congress were not followed when the Department withheld grand jury records, wiretap documents, and consumer credit information from the Inspector General.⁴⁶ Eventually, the Inspector General obtained these records after the Attorney General and the Deputy Attorney General granted written permission.⁴⁷

Under the Act, however, the Attorney General is required to write to the Inspector General not when *permitting* access to records, but when *preventing an OIG review, altogether*.⁴⁸ In other words, the burden is placed on the Attorney General to explain in writing why the Inspector General’s work should be impeded, not *vice versa*. Under the statute, the Attorney General’s blessing on the IG’s work is not required. That is the essence of independence.

Last May, the Department’s leadership asked the Office of Legal Counsel to issue an opinion on this topic. In October, I asked that this opinion specifically address the legality of the Attorney General’s current practice. House Judiciary Committee Ranking Member, John Conyers, joined me in this request. We are still waiting for the OLC Opinion.

⁴³ 5 U.S.C. App. § 6(a)(1).

⁴⁴ 5 U.S.C. App. § 8E(a)(1), (2).

⁴⁵ 5 U.S.C. App. § 8E(a)(3).

⁴⁶ *See* Senate Homeland Security Hearing.

⁴⁷ *Id.*

⁴⁸ 5 U.S.C. App. § 8E(a)(3).

On February 3, 2015, the Inspector General issued a report pursuant to Section 218 of the Department of Justice Appropriations Act, 2015,⁴⁹ stating that the Federal Bureau of Investigation (FBI) has failed – for reasons unrelated to any express limitation in Section 6(a) of the Inspector General Act (IG Act) to provide the Office of the Inspector General with timely access to certain records.⁵⁰

Section 218 provides that no appropriated funds shall be used to deny the Inspector General timely access to all Department records, or to impede his access to such records, unless in accordance with an express limitation of Section 6(a) of the IG Act.⁵¹ Section 218 also requires the Inspector General to report to Congress within five calendar days of any failures to comply with this requirement.⁵²

According to the February 3, 2015 report, the unfulfilled document requests were made on September 26, 2014 and October 29, 2014 as part of two investigations being conducted by the OIG under the Department's Whistleblower Protection Regulations for FBI employees, 28 C.F.R. pt. 27.⁵³

The main reason for the FBI's unwillingness to produce the requested records by the deadline requested by the Inspector General is the FBI's desire to continue its review of e-mails requested by the OIG to determine whether they contain any information which the FBI maintains the OIG is not legally entitled to access, such as grand jury, wiretap, and consumer credit information.⁵⁴ Further, the FBI further informed the OIG that the FBI would need the approval of the Attorney General or Deputy Attorney General in order to produce the requested records.⁵⁵

However, as noted above, the Attorney General's blessing on the IG's work is not required.

- a. If confirmed as Attorney General, will you commit to providing the OLC opinion to the Committee by a date certain?⁵⁶

⁴⁹ Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (2014).

⁵⁰ Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Thad Cochran and Sen. Barbara Mikulski, Sen. Comm. on Appropriations, and Rep. Harold Rogers and Rep. Nita Lowey, House Comm. on Appropriations (February 3, 2015) [hereinafter February 3 Report].

⁵¹ Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (2014).

⁵² *Id.*

⁵³ February 3 Report.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ In January 2012, OLC issued an opinion one month after it was requested, defending the power of the President to make recess appointments even when the Senate convenes for pro forma sessions. Of course, the Supreme Court unanimously struck down OLC's erroneous interpretation. But this shows that OLC can issue opinions rather quickly when it wants to.

- b. Given the clear language of the Inspector General Act, will you give me your commitment that, if confirmed, you will not stonewall the Inspector General or delay his work?
- c. And if you do find it necessary to delay an inquiry for legitimate reasons, will you commit to immediately provide the written notice required by Section 8E(a)(3) of the Inspector General Act?
- d. If you believe a clarification to the law is necessary to ensure unlimited access to records for the Inspector General, would you support adding “notwithstanding any other provision of law” to the access statute as a solution adequate to prevent further access denials and delays? If not, please explain why not?
- e. Given the FBI’s ongoing impediment of the Inspector General’s independence and timely access to records, as detailed in the February 3, 2015 report, will you commit to resolving this dispute as soon as possible according to the explicit provisions of the Inspector General Act, should you be confirmed?

55. Department of Justice attorneys have a great deal of power and discretion but I am concerned that without proper oversight, this power and authority can be abused without consequences. For example, the Department of Justice’s Inspector General (IG) does not have the ability to investigate attorney misconduct. Rather, attorney misconduct is currently investigated by the Office of Professional Responsibility but this office does not have the same strong statutory independence as the IG. Currently, there are at least three examples of attorneys who remain employed by the Department despite evidence that these attorneys committed serious misconduct.

- a. A Federal judge found that Karla Dobinski, a trial attorney in the Civil Rights Division, engaged in a “wanton reckless course of action” when she posted comments to Nola.com news stories under a pseudonym about a trial where she provided evidence as a disinterested expert witness.⁵⁷ If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?
- b. Stephanie Celandine Gyamfi, an attorney with the Department’s Voting Rights section, was found to have engaged in perjury during a 2013 DOJ IG investigation. In addition, Ms. Gyamfi posted comments regarding an ongoing matter at the Voting Rights section suggesting that the State of Mississippi should change its motto to “disgusting and shameful.”⁵⁸ If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?

⁵⁷ http://www.nola.com/crime/index.ssf/2013/09/doj_prosecutor_karla_dobinski.html

⁵⁸ http://www.wtok.com/home/headlines/Comment_Flap_Continues_150703975.html

- c. A Federal judge wrote that DOJ attorneys attempted to perpetrate a “fraud upon the court” in a case involving Bureau of Alcohol, Tobacco, and Firearms Agent Jay Dobyns. U.S. District Court Judge Francis Allegra also took the unusual step of submitting these findings to Attorney General Holder.⁵⁹ If confirmed will you personally review Judge Allegra’s submission to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?
 - d. On January 22, 2015, the District Court of the Southern District of Georgia received a letter from the U.S. Attorney’s Office informing it that Assistant U.S. Attorney Cameron Ippolito and ATF Special Agent Lou Valoze engaged in an improper relationship and provided potentially false or misleading information to a government agency in order to secure a visa for an informant. This has compromised cases in which Ms. Ippolito and Mr. Valoze collaborated and has already required Giglio disclosures in four separate cases. Ms. Ippolito and Mr. Valoze’s actions have harmed the Federal government and the Department of Justice. If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?
 - e. What steps would you take to create a more independent and credible system of attorney discipline at the Department?
 - f. Would you support transferring the DOJ/OPR function to the Inspector General so that there can be an independent reviews of attorney misconduct allegations at the Department?
 - g. If not, please explain what is special or unique about attorney misconduct that should shield it from oversight by the Department’s Inspector General like all other types of misconduct?
56. According to media reports, in Fairfax County, Virginia, an unarmed man, John Geer, was shot by a police officer while standing in his home, and while, according to other police officers who were present at the scene, his arms were raised above his shoulders, and he was then left unattended for an hour where he bled to death.⁶⁰

In December 2014, the Department’s Civil Rights Division found the Cleveland Division of Police engaged in a pattern or practice of unreasonable and unnecessary use of force.⁶¹

⁵⁹ <http://www.foxnews.com/politics/2015/01/29/federal-judge-blasts-doj-lawyers-in-case-fast-furious-whistleblower/>
⁶⁰ Tom Jackman, “John B. Geer had hands up when shot by police, four officers say in documents,” The Washington Post, January 31, 2015, http://www.washingtonpost.com/local/crime/officer-who-shot-john-geer-says-he-moved-hands-toward-waist-3-other-officers-say-no/2015/01/31/7cc2c0da-a7f6-11e4-a06b-9df2002b86a0_story.html.

⁶¹ U.S. Department of Justice, *Justice Department and City of Cleveland Agree to Reform Division of Police After Finding A Pattern or Practice of Excessive Force*, December 4, 2014, <http://www.justice.gov/usao/ohn/news/2014/04deccpd.html>.

The investigation was launched in March 2013 following a number of high-profile use of force incidents and requests from the community and local government to investigate.⁶²

On January 21, 2015, the Department of Justice confirmed that the following investigations are still ongoing at the Civil Rights Division,⁶³

- Shooting death of Mike Brown (Ferguson, Missouri) – initiated August 11, 2014
 - Shooting death of Eric Garner (Staten Island) – initiated July 18, 2014
 - Shooting death of John Geer (Fairfax County, Virginia) – initiated February 11, 2014
- a. It is imperative that cases of alleged police misconduct are handled on a fair, impartial, and timely manner so that officers who have used force in an inappropriate way are held accountable and those who have acted lawfully are swiftly exonerated so that they may reclaim their reputations and resume their duties. If confirmed as Attorney General, will you ensure the thorough and timely resolution of these cases?
 - b. If confirmed as Attorney General, what would you do to ensure more transparency and better statistics on law enforcement's use of deadly force *nationwide*?

57. On December 23, 2014 Senator Leahy and I sent Attorney General Holder a letter concerning the use of cell-site simulators by law enforcement agencies.⁶⁴ According to information provided to Judiciary Committee staff by the Federal Bureau of Investigation, these devices can capture the serial numbers of thousands of cell-phones in its vicinity by mimicking cell-phone towers.

The FBI is in a unique position to shape how the device is used by law enforcement, because state and local police departments are required to coordinate their use of the device with the FBI.⁶⁵ The FBI only recently began requiring its agents to obtain a search warrant whenever the device is used as part of an FBI operation, but there are several broad exceptions that may swallow this rule.⁶⁶

For example, the FBI's new policy does not require a search warrant in cases in which the technology is used in public places or other locations at which the FBI deems there is no reasonable expectation of privacy.⁶⁷

⁶² *Id.*

⁶³ Email from U.S. Department of Justice, Office of Legislative Affairs, to Staff of Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary (January 21, 2015).

⁶⁴ Letter from Sen. Charles E. Grassley, and Sen. Patrick Leahy, S. Comm. on the Judiciary, to Hon. Eric Holder, Attorney General, and Hon. Jeh Johnson, Secretary of Homeland Security, (December 23, 2014), <http://www.leahy.senate.gov/download/12-23-14-pjl-and-ceg-to-doj-and-dhs1>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

I am concerned about whether the FBI and other law enforcement agencies at the Justice Department have adequately considered the privacy interests of other individuals who are not the targets of the interception, but whose information is nevertheless being collected when these devices are being used. I understand that the FBI believes it can address these interests by maintaining that information for a short period of time and purging the information after it has been collected.⁶⁸ But there is a question as to whether this sufficiently safeguards privacy interests if there is insufficient oversight and transparency regarding the use of this type of technology.

- a. If confirmed as Attorney General, will you commit to reviewing the legal authority used to collect information from the cell phones of innocent third parties who are not the targets of an interception order to ensure that it meets constitutional requirements and protects their privacy interests?
- b. What steps would you take to strengthen oversight to ensure that there is no unauthorized retention of data collected by these devices?
- c. Given the FBI's role in making the devices available to state and local authorities, do you believe the Department has any responsibility to ensure that state and local authorities have sufficient oversight and safeguards in place to prevent abuses? If so, what steps would you take to do so if confirmed?

58. According to the State Department, “[t]hose who patronize the commercial sex industry form a demand which traffickers seek to satisfy.”⁶⁹ Attorney General Holder has identified human trafficking and sexual exploitation of children as priority goals for investigation and litigation at the Justice Department.⁷⁰ In December 2012, Inspector General Michael Horowitz reported that three Drug Enforcement Administration agents admitted to having used their DEA Blackberry devices to arrange for paid sexual services while stationed in Cartagena, Colombia.⁷¹

These actions were an embarrassment to our nation, but the true victims are the children, women, and other vulnerable individuals who are trafficked into prostitution to satisfy this demand. In the Inspector General's words:

Even where prostitution is legal, it is often an abusive activity that involves coercive relations and it can contribute to human trafficking, a crime that DOJ seeks to eradicate. [E]mployees who engage in the solicitation of prostitution

⁶⁸ *Id.*

⁶⁹ U.S. Department of State, *Trafficking in Persons Report* (June 2008), 24.

⁷⁰ U.S. Department of Justice, *Strategic Plan, Fiscal Years 2014-2018* (February 2014), 2.

⁷¹ Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Joe Lieberman, Chairman, and Sen. Susan Collins, Ranking Member, Sen. Comm. on Homeland Sec. and Gov. Affairs (Dec. 20, 2012), 3.

while on official travel or when stationed in foreign countries undermine their own credibility and DOJ's effectiveness in addressing this priority.⁷²

For this reason, I am deeply troubled to learn that the Department of Justice does not have a zero-tolerance policy requiring the dismissal of employees who engage in the solicitation of prostitution.⁷³ The Department currently employs more than 1,200 permanent positions abroad, and employees go on more than 6,100 trips a year to more than 140 countries.⁷⁴

According to a 2012 State Department cable on human trafficking:

It is the position of the U.S. government that the procurement of commercial sex can fuel the demand for sex trafficking. Women, children, and men are trafficked into the commercial sex trade *regardless of whether prostitution is legal or criminalized in a country*, and thus, the procurement of commercial sex runs the risk of facilitating or supporting human trafficking.

There are concerns that prostituted youth, including LGBT youth, are especially vulnerable to human trafficking and other forms of exploitation. Department employees should understand that a victim of sex trafficking may not appear to be under duress, given that coercion and threats of violence are often used to hold people in servitude. Indeed, there is a good chance that a sex trafficking victim will appear to be engaging in a commercial sex transaction willingly

Further, assumptions based on appearances as to whether or not an individual is 18 years old are frequently erroneous, as many brothel managers and pimps dress minors to look older. Purchasing sex from a minor is a serious crime under U.S. law.⁷⁵

Given the gravity of these concerns, it is unclear why the Department has *not* instituted a policy that incentivizes employees to *steer well clear* of facilitating or committing these heinous crimes.

If confirmed as Attorney General, will you implement a zero-tolerance policy that requires the dismissal of any employee who engages in the solicitation of prostitution, without exception? If not, please explain why.

⁷² U.S. Department of Justice, Office of Inspector General, *Review of Policies and Training Governing Off-Duty Conduct by Department Employees Working in Foreign Countries* (January 2015), 7.

⁷³ *Id.* at 48-50.

⁷⁴ *Id.* at ii.

⁷⁵ *Id.* at 40-41.

59. The incumbent Attorney General criticized state so-called “stand your ground” laws under which a person who otherwise has a legitimate claim of self-defense is not required to flee before exercising the option of defensive force. This rule is also part of federal common law, as articulated by the U.S. Supreme Court in cases such as *Beard v. U.S.*, 158 U.S. 550, 564 (1895) and *Brown v. U.S.*, 256 U.S. 335, 343 (1921).
- a. What is your position on state stand your ground laws? If you oppose such laws, do you believe DOJ has a role in opposing such laws? If you believe that DOJ has such a role, what is it?
 - b. Under what circumstances do private citizens have the right to use force, including deadly force, to defend themselves and others from imminent threats of unlawful, deadly harm?
60. I believe we should do everything in our power to stop the poaching of elephants, as well as the illicit trade of ivory and other wildlife products. It is my understanding that the administration is moving forward with a regulation that would make it illegal to sell items containing ivory in the United States unless the owner can prove with documentation the item is more than 100 years old. The administration claims this regulation would reduce poaching and international illicit trade in ivory.
- Ivory is commonly found in chess sets, tea pots, firearms, musical instruments and myriad other objects. Can you please explain how banning the domestic sale of these legally possessed items – most of which were acquired long ago when documentation was not required – would help achieve the administration’s goals? Don’t you believe the Department of Justice should be directing resources to combat actual wildlife traffickers, much like you have done in New York?
61. The Executive Office for U.S. Attorneys (EOUSA) is responsible for the administration of FOIA requests for records held by the 94 U.S. Attorneys Offices (USAOs). Annual FOIA statistics are presented in aggregate by EOUSA and do not provide FOIA performance data on individual USAOs. EOUSA reported that it had 1,525 pending FOIA requests at the start of fiscal year 2014. How many of those pending requests were pending with the Eastern District of New York?
62. EOUSA reported in aggregate that only 191 (7%) of the 2,729 FOIA requests processed in fiscal year 2014 were “fully granted.” How many FOIA requests were processed by the Eastern District of New York and how many of them were “fully granted”?

63. EOUSA reports the aggregate response time for all processed perfected FOIA requests. In fiscal year 2014, the median number of days for response was 90 and the average number of days was 132. What was the Eastern District of New York's median and average number of days for response?
64. EOUSA reported that 1,783 FOIA requests were "backlogged" at the end of fiscal year 2014. How many FOIA requests were "backlogged" with the Eastern District of New York?
65. As you know, the Judiciary Committee has oversight responsibility over the Department of Justice. And to help fulfill those responsibilities, last fall, one of the attorneys on my committee staff, a former Department prosecutor, traveled to Iowa to meet with federal law enforcement.

While there, he spent time in both judicial districts in Iowa. He met with the FBI, the DEA, with local law enforcement, and with the U.S. Marshals. But he was told by the Department of Justice here in Washington that the Department would not make anyone from either of the United States Attorney's Offices in Iowa available for a meeting with him, even as a courtesy.

Are you committed to making sure Congressional staff can meet, as appropriate, with local Department of Justice personnel in the states, while of course observing all ethical rules about discussing specific cases or investigations? I think most Americans would be surprised that local U.S. Attorney's offices are not allowed to speak with their Senator's staff under this administration.

66. In September 2014, it was reported that the President was expected to sign an executive order that would require the Pentagon, the Justice Department, the Department of Homeland Security and other agencies to reveal more details about the size and surveillance capabilities of their drone programs. The order would also reportedly require these agencies to reveal the policies they have in place to protect privacy and civil liberties in connection with their use of drones.

The President, however, has not yet issued this executive order. Do you support the issuance of such an order, and if you are confirmed, will you commit to both explaining this delay to me and for advocating for one?

67. I wrote to the Department of Justice back in October 2013 concerning its handling of a small number of cases referred to it in which National Security Agency employees intentionally and willfully abused surveillance authorities, in many cases to spy on their significant others. The press calls these cases "LOVEINT." I also spoke to Attorney

General Holder about the request when he was before the committee last January. He told me he would respond soon.

It has been over a year, and I have not received a response. I understand that the overwhelming majority of those who work in our national security and intelligence communities are dedicated, law-abiding people who deserve our profound thanks for helping to keep us safe. Nonetheless, there must be appropriate accountability for those few who violate the trust placed in them.

Can you commit to me that if you are confirmed, you will respond to my letter within 30 days?

68. FBI Director Comey has been talking a lot recently about the increasing inability of law enforcement officers to be able to access evidence on computers, cell phones and other devices because of encryption, even when they have obtained a valid search warrant. He is clearly worried about what he calls “Going Dark,” and I hear the same from state and local law enforcement in Iowa.

On the other hand, the civil liberties community and technology companies argue that building in a door for law enforcement to bypass this encryption on their products, even when law enforcement has obtained proper legal authority, will weaken the encryption and make their customers more vulnerable to being hacked. That would obviously be a serious problem as well.

Do you have a perspective on this problem and any potential solutions? Have you felt the effects of the “Going Dark” issue in cases your office has handled?

69. In December 2014, President Obama announced that the administration would begin to normalize diplomatic relations with Cuba. However, it is estimated that as many as 70 fugitives from our criminal justice system are being provided political asylum there. Among them are a number of accused killers of law enforcement officers, including Joanne Chesimard, who was convicted of executing a New Jersey police officer in 1977. She subsequently escaped from prison, and is currently on the FBI’s list of Ten Most Wanted Terrorists. But almost immediately after President Obama announced the change in U.S. policy toward Cuba, the Cuban government made clear that there would be no change in their refusal to hand over fugitives like Chesimard.

- a. Do you think it was appropriate for the President to change U.S. policy toward Cuba, and to provide that government the benefit of increased trade and contact with the United States, without that government agreeing to return these fugitives to our criminal justice system to face justice?

- b. If confirmed, what will you do to bring these fugitives to justice in the United States?

70. I was glad to hear you say during your hearing that you do not support the legalization of marijuana. As you know, in 2013, the Department of Justice decided that it would not seek to strike down state laws in Colorado, Washington, and elsewhere that have legalized the recreational use of that drug, so long as these states implement effective regulatory regimes that protect key federal interests. This policy is outlined in the August 29, 2013 Cole Memorandum.

- a. In some of these states, like Colorado, businesses are currently advertising the availability of recreational marijuana on websites and on television news programs such as 60 Minutes. To be clear, do you agree that individuals that manufacture and distribute marijuana in that state are breaking federal law, no matter what state law permits?
- b. I understand the Department of Justice is not gathering data on the federal priorities identified in the Cole Memorandum to evaluate whether that policy needs re-visiting. Yet these priorities are already being negatively affected, including through the increasing diversion of recreational marijuana to nearby states like Iowa. This sounds to me like the Department does not want to know how its policy is functioning. Even the New York Times has editorialized that it's important to evaluate whether the states are "holding up their end of the bargain." Do you believe the Department should be systemically collecting data related to these federal priorities in a centralized place, establishing metrics, and analyzing the data for the purpose of evaluating whether the policy outlined in the Cole Memorandum is working, and if you are confirmed will you commit to taking these steps?
- c. As you also mentioned in your testimony, in some of these states there is a specific problem presented by edible marijuana products falling into the hands of children. Some of these marijuana products, as well as other products containing different illegal drugs like methamphetamine, are marketed and packaged like candy. Would you support legislation to address this problem by increasing the penalties for those manufacturers or distributors of controlled substances that know, or have reasonable cause to believe, that their controlled substances will be distributed to minors? If confirmed, would you commit to working with me on such legislation?

- d. Attorney General Holder has indicated that he believes that marijuana businesses in states like Colorado should have access to the U.S. banking system. Do you agree? If so, doesn't depositing the proceeds of marijuana businesses into banks violate the federal laws prohibiting money laundering, and do you believe it is appropriate for the nation's top law enforcement officer to advocate for conduct that violates those laws?

71. I have concerns with this Administration's preference to treat al-Qaeda terrorists as criminal defendants with the same rights as U.S. citizens, as opposed to unlawful combatants subject to military detention and prosecution under the law of war. Below is a hypothetical situation that could well present itself to you if you are confirmed.

If on your first day as Attorney General, the U.S. military captured Ayman Al-Zawahiri, the current leader of Al-Qaeda, and transported him to a ship in the Mediterranean Sea or the Persian Gulf, what advice would you give the President about his detention, interrogation, and possible trial, and what factors would you weigh in formulating that advice?

- a. Specifically, would you recommend that he be sent to Guantanamo Bay for detention and interrogation with those who planned the 9/11 attacks? If not, where would you advise that this detention and interrogation take place? And by whom? Why?
- b. When, if at all, would you recommend that he be read Miranda rights? Why?
- c. Would you advise that he be tried in civilian court or through the military commissions system, and why?

72. Law enforcement and national security officials have discussed how critical the surveillance authorities under Section 702 of the Foreign Intelligence Surveillance Act were to stopping a plot by Najibullah Zazi, an American who was born in Afghanistan, to bomb the New York City subway in 2009. Your office, the Eastern District of New York, handled that case.

How important were these authorities to that case, and how were they used to identify and stop Mr. Zazi from killing an untold number of Americans?

73. As you probably know, I've been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors, and the inability of family farmers and producers to obtain fair prices for their products. I've also been concerned about the possibility of collusive and anti-competitive business practices in the agriculture sector. Do I have your commitment that the Antitrust Division will pay close attention to agribusiness competition matters? Can you assure me that agriculture

antitrust issues will be a priority for the Justice Department if you are confirmed to be U.S. Attorney General?

74. Historically, the Justice Department has not paid much attention to monopsony (buyer power) issues, focusing more on monopoly (seller power) and consumer effects. Do you intend to use your antitrust authorities to look into monopsony issues in the agriculture sector? Please explain.
75. In 1986, Congress amended the Lincoln-era False Claims Act to strengthen the right and incentives of private citizens to help the federal government hold contractors accountable for submitting false and fraudulent claims. Those whistleblowers, called relators, uncover the vast majority of incidents of waste, fraud, and abuse in federal contracting. In Fiscal Year 2013, relators accounted for 89 percent of new FCA actions.⁷⁶ And the FCA overall has been hugely successful in recovering funds for the federal government. In Fiscal Year 2014 alone, the FCA was responsible for nearly \$6 billion in recovered funds.⁷⁷ Because the FCA is so effective, well-funded interests in various industries are always attempting to undermine it.
- a. How many FCA complaints have you received during your tenure as U.S. Attorney for the Eastern District of New York? In how many of those cases did your office intervene? What policies and procedures did you look to in reaching these intervention determinations?
 - b. If confirmed, will you vigorously enforce the provisions of the False Claims Act, and will you devote adequate resources to investigating and prosecuting FCA cases?
 - c. What should DOJ's policy be with respect to the settlement of False Claims Act cases which the Justice Department does not join, where the law provides that the qui tam plaintiff may prosecute the action? For example, is it the policy of the DOJ to undertake direct negotiations with the defendant without qui tam counsel in such cases? Are there any circumstances in which it would be appropriate for the Justice Department to negotiate settlement of a non-intervened FCA case without qui tam counsel's involvement?
76. What should DOJ's policy be with respect to the settlement of False Claims Act cases which the Justice Department does not join, where the law provides that the qui tam plaintiff may prosecute the action? For example, is it the policy of the DOJ to undertake direct negotiations with the defendant without qui tam counsel in such cases? Are there

⁷⁶ Department of Justice, Civil Division, Fraud Statistics – Overview (Oct. 1, 1987 – Sept. 30, 2013).

⁷⁷ Press Release, Department of Justice, Justice Department Recovers Nearly \$6 Billion from False Claims Act Cases in Fiscal Year 2014 (Nov. 20, 2014).

any circumstances where it would be appropriate for the Justice Department to negotiate settlement of a non-intervened FCA case without qui tam counsel's involvement?

77. What should DOJ's policy be with respect to multipliers on single damages in False Claims Act cases? Are there ever instances where the Justice Department should seek to collect less than single damages?
78. On August 1, 2013, you wrote to me in your capacity as the U.S. Attorney for the Eastern District of New York seeking information in connection with an investigation conducted by your office. The request was signed on your behalf by Assistant U.S. Attorney James D. Gatta. Your letter sought copies of two letters and their attachments from my office—one letter addressed to Representative Elijah Cummings and the other addressed to me and Representative Darrell Issa.

The letters your office sought copies of were written by Joshua Levy, the attorney for David Voth. Mr. Voth was the ATF Group Supervisor responsible for Fast and Furious. The letters from Mr. Levy contained numerous attachments of internal ATF and DOJ documents in an attempt to defend Mr. Voth's role in Fast and Furious and attack the whistleblowers who eventually exposed the operation. It is unclear how Mr. Levy or Mr. Voth came into possession of some of the documents. In addition to Mr. Levy providing his letter and attachments to my office, it appears someone provided them to the press as well.⁷⁸

Following receipt of your letter, Mr. Gatta also contacted the Office of Senate Legal Counsel seeking permission to conduct an interview with members of my staff. Following a cordial and cooperative discussion, there was no further follow-up from your office.

- a. Were you personally aware of this document request or interview request at the time, and did you approve either of them?
- b. What potential crime was your office investigating?
- c. What were the facts and circumstances that served as the predicate for the investigation?
- d. What nexus to the Eastern District of New York justified the involvement of your office?
- e. What is the current status of the investigation?
- f. In your testimony before the Committee, you indicated that your involvement with Fast and Furious-related matters was limited to your service on the Attorney

⁷⁸ Associated Press, "Key ATF agents in Fast and Furious case blame prosecutors," April 16, 2012, <http://azcapitoltimes.com/news/2012/04/16/key-atf-agents-in-fast-and-furious-case-blame-prosecutors/>.

General's Advisory Committee, which focused on disseminating lessons learned from the flawed investigative techniques to your U.S. Attorney colleagues. Yet your August 2013 letter request to me suggests that your office investigated something involving the ATF Group Supervisor in Phoenix most directly responsible for the operation. Please explain the apparent discrepancy.

79. The Firearms Owners Protection Act of 1986 amended the Gun Control Act of 1968 by adding the following language, now located in 18 U.S.C. 926(a):

No...rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.

⁷⁹

During the course of my investigation into ATF's Operation Fast and Furious, my office received allegations from multiple gun dealers in Arizona that ATF personnel routinely photocopy all ATF form 4473s (Firearms Transaction Record) and book bound entries in connection with routine annual inspections of licensed gun dealers. Dealers from other parts of the country have made similar allegations more recently.

Although federal firearms licensees felt uncomfortable turning over the records of lawful gun purchases *en masse*, they also felt obligated to comply for fear of regulatory reprisals from ATF. These administrative requirements could be used to create a national gun registry of law-abiding gun owners, which is specifically prohibited by law.

Also in the course of the Fast and Furious investigation, Congress learned about the ATF's use of the Suspect Gun Database, a feature of ATF's Firearms Tracing System. ATF agents added extensive numbers of firearms into the Suspect Gun Database. It is unclear what, if any, administrative guidelines detail when it would be appropriate to do so. The Suspect Gun Database could be used to track information about gun owners even when ATF does not have enough evidence to meet the legal standard for seizing a firearm or any other articulable criteria for entering the information about the gun and the purchaser into a database. With no clear criteria for adding a firearm connected to an investigation to the Suspect Gun Database, the decision appears to be largely up to the discretion of an individual ATF agent.

⁷⁹ Firearms Owners Protection Act, 1986; Pub. L. No. 99-308, May 19, 1986; 100 Stat. 449, 459.

- a. Does the Suspect Gun Database, which contains purchaser, dealer and transaction information, comply with the Firearms Owners' Protection Act of 1986? If so, what is the legal basis for that claim? And if confirmed, what steps would you take to ensure that ATF only adds information about gun owners into its databases in compliance with the law?
 - b. If confirmed, what steps would you take to determine the extent to which ATF is photocopying or photographing all ATF form 4473s and book bound entries in connection with routine annual inspections of licensed gun dealers?
 - c. Do you agree that such a practice would be tantamount to a national gun registry of all gun owners who purchased firearms from a licensed dealer? If so, please explain what steps you would take, if confirmed, to ensure that no such practice was sanctioned or permitted by the Justice Department? If not, please explain why not.
 - d. Does 18 U.S.C. Section 923(g)(7) govern the addition of data to the Suspect Gun Database and does it impose any limiting criteria or legal standards on the addition of data to the Suspect Gun Database?
 - e. What administrative steps would you propose to ATF to ensure that only firearms truly related to a criminal investigation are added to the Suspect Gun Database?
 - f. Will you require ATF to purge any purchaser information that is illegally in its databases, including in the Multiple Sales System, which, under ATF's own rules, must be taken out of the system after two years if there is no connection to any firearms trace?
80. In 2012, the Department of Justice and Securities Exchange Commission (SEC) issued joint guidance detailing Foreign Corrupt Practices Act (FCPA) enforcement information and the agencies' enforcement priorities. While the guidance clarified portions of the law and some of the agencies' enforcement theories, many companies and individuals seeking to comply with the FCPA have asked for further, and continued, clarification. This request was expressed to Attorney General Eric Holder and Assistant Attorney General Leslie Caldwell during previous Committee hearings.
- a. If confirmed, will you commit to working with companies and individuals to further improve the Guidance?
 - b. Will you commit to updating the Guidance, when necessary, to reflect changes in DOJ enforcement practices?
81. In the area of FCPA enforcement, there is little guiding case law available for compliance practitioners to rely on. However, the FCPA Guidance that was issued in 2012 took an important first step in helping practitioners understand how the enforcement agencies' interpret the statute. The Guidance includes six anonymized examples of declinations—

instances where the DOJ and SEC declined to bring FCPA-related enforcement actions in recognition of the companies' timely voluntary disclosures, meaningful cooperation, and sophisticated compliance policies and controls. The continued publication of FCPA declinations would foster greater FCPA compliance by providing practitioners with a better understanding of how the FCPA is interpreted. If confirmed, would you support increasing DOJ transparency regarding declination decisions?

Senator Grassley, Chairman
Follow-up Questions for the Record
Loretta Lynch
Nominee, to be United States Attorney General

Please find below several follow up questions to my first set of Questions for the Record. As I've previously indicated, the Senate is of course constitutionally obligated to fulfill its duty to provide advice and consent on the President's nominees. And in my view, this duty is most essential for Cabinet level positions and of course, the Supreme Court. A number of colleagues, on both sides of the aisle, have publicly indicated their support or opposition to your nomination. I have not. With that in mind, I remain hopeful that you will provide answers to these questions in a thorough and complete way.

Finally, please provide your answers to these and other follow up question no later than Friday February 20. However, with respect to questions numbered (1) to (18) below, please submit your answers no later than Wednesday, February 18th. Thank you in advance for your cooperation.

Follow-up to Question 38(a-b):

HSBC: As United States Attorney for the Eastern District of New York, you found that HSBC had laundered, "at least \$881 million in drug trafficking proceeds – including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in Colombia."¹ Yet to date, you have not charged or fined a single HSBC employee. In your response to my questions for the record, you said that you "carefully considered whether there was sufficient admissible evidence to prosecute an individual and whether such a prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney's Manual."

1. In the course of your investigation, which individuals at HSBC do you believe were most culpable for this money laundering?
2. What consequences or accountability, if any, were you able to impose on those individuals through the deferred prosecution agreement? If none, please explain why not.
3. Why do you believe that concluding an investigation into \$881 million in money laundering without a single indictment or fine of an individual is a satisfactory result?
4. Did you communicate with any bank regulators regarding your investigation of HSBC? If so, who did you communicate with? Please describe the communications in detail and explain what actions, if any, you took as a result.

¹ Press Release, U.S. Department of Justice, Office of Public Affairs, HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement (Dec. 11, 2012).

5. Did you communicate with any economists regarding your investigation of HSBC? If so, who did you communicate with? Please describe the communications in detail and explain what actions, if any, you took as a result.

Whistleblower Documents: Recent news reports have referenced at least two sets of whistleblower documents relating to HSBC. According to the International Consortium of Investigative Journalists (ICIJ), the source of one set of documents is HSBC IT specialist Hervé Falciani.² The source for the other is reportedly former HSBC Vice President and Client Relationships Manager John Cruz.

Hervé Falciani: While at HSBC Private Bank (Suisse) in Geneva with access to a Customer Relationship Management (CRM) system for the bank, Falciani reportedly “gained access to and collected unencrypted bank data.”³ Falciani reportedly provided the data to French authorities, who “shared it with other governments in 2010, leading to prosecutions or settlements with individuals for tax evasion in several countries.”⁴ According to the ICIJ, “Nations whose tax authorities received the French files include the U.S., Spain, Italy, Greece, Germany, Britain, Ireland, India, Belgium and Argentina.”⁵

John Cruz: A former Vice President and Client Relationships Manager for HSBC, Cruz spoke with IRS criminal investigators in Colorado in early 2012 and provided approximately one thousand pages of documents and 30 hours of audio recordings to the IRS and the Securities and Exchange Commission in whistleblower submissions in July 2012. He also provided the material to the Department of Justice in September 2012, more than two months before your office filed the deferred prosecution agreement on December 11, 2012.

6. According to public reporting about the Falciani documents, they indicate that HSBC did not merely launder money for drug cartels, it also helped launder money for dictators, arms dealers who sold mortars to child soldiers, and traffickers in blood diamonds. Descriptions of the Cruz documents also suggest that the extent of HSBC’s criminal conduct may not have been fully described in the Statement of Facts associated with the DPA reached with the government. If HSBC did not inform the government about the ongoing criminal conduct allegedly demonstrated by the Falciani and Cruz documents:
- a. Did HSBC provide any of the Falciani or Cruz documents to the Department?

² Martha M. Hamilton, Whistleblower? Thief? Hero? Introducing the Source of the Data that Shook HSBC, International Consortium of Investigative Journalists (Feb. 8, 2015), available at: <http://www.icij.org/project/swiss-leaks/whistleblower-thief-hero-introducing-source-data-shook-hsbc>.

³ Martha M. Hamilton, Whistleblower? Thief? Hero? Introducing the Source of the Data that Shook HSBC, International Consortium of Investigative Journalists (Feb. 8, 2015), available at: <http://www.icij.org/project/swiss-leaks/whistleblower-thief-hero-introducing-source-data-shook-hsbc>.

⁴ Gerard Ryle et al., Banking Giant HSBC Sheltered Murky Cash Linked to Dictators and Arms Dealers, International Consortium of Investigative Journalists (Feb. 8, 2015), available at: <http://www.icij.org/project/swiss-leaks/banking-giant-hsbc-sheltered-murky-cash-linked-dictators-and-arms-dealers>.

⁵ *Id.* (emphasis added).

- b. If HSBC did provide these documents to the Department, why was the conduct evidenced in them not charged in the Information, included in the Statement of Facts, or otherwise brought to the attention of the court?
 - c. Paragraph 6 of HSBC's DPA requires it to fully cooperate with the Department in its investigation of HSBC and related parties. If HSBC failed to provide the Falciani or Cruz documents to the Department, isn't that a violation of HSBC's obligation to fully cooperate with the Department?
 - d. Paragraph 16 of HSBC's DPA permits the Department to declare that HSBC has breached the agreement, which would then allow it to prosecute HSBC for the conduct set forth in the related Statement of Facts. If HSBC failed to provide the Falciani or Cruz documents to the Department, isn't that a breach of the DPA? If so, why shouldn't the Department seek to prosecute HSBC for the conduct set forth in the Statement of Facts?
 - e. Is there an ongoing investigation by any component of the Department into the conduct evidenced in the Falciani or Cruz documents? If so, when was that investigation initiated?
7. The Falciani and Cruz documents reportedly support allegations that, among other things:
- a. HSBC engaged in sophisticated tax evasion;
 - b. HSBC had laundered money and helped evade taxes for associates of Haitian dictator Jean Claude "Baby Doc" Duvalier and Syrian dictator Bashar al Assad;
 - c. HSBC laundered money and helped evade taxes for Katex Mines Guinee, a company which helped supply arms to child soldiers in Liberia;
 - d. HSBC laundered money and helped evade taxes for Emmanuel Shallop, who has since been convicted of dealing in blood diamonds;
 - e. HSBC created codenames for tax evasion clients, for example Australian financier Charles Goode was referred to as "Mr. Shaw;"
 - f. an HSBC manager specifically advised Keith Humphreys, a British client, on how to evade taxes by making "withdrawals from 'cash points' when they are outside the UK."⁶

Did your office have access to the Falciani or Cruz documents prior to the execution of the DPA? If not, please explain why not.

8. Regardless of how you may have known, if you did know about the information in the Falciani or Cruz documents before the DPA was executed, why did you think that justice was served by not charging HSBC with that conduct or otherwise bringing it to the court's attention in connection with the prosecution?

⁶ David Leigh et al., Catalogue of malpractice endorsed by bankers laid bare in HSBC files, *The Guardian* (Feb. 8, 2015).

9. Regardless of how you may have known, if you did know about the information in the Falciani or Cruz documents before the DPA was executed, what effect if any did this have on your decision to approve the agreement? If not, would this have affected your decision to approve the agreement had you know the information? Please explain.
10. The DOJ's deferred prosecution agreement allowed HSBC to retain its American banking charter. Please explain why you believe that was appropriate.
11. Were you aware of Mr. Falciani submissions to French authorities, which were reportedly shared with the United States prior to the execution of the DPA? If so, what actions if any did you take to investigate the information provided? If not, please explain why not.
12. Were you aware of Mr. Cruz's whistleblower submissions to the IRS, SEC, and Justice Department prior to the execution of the DPA? If so, what actions if any did you take to investigate the documents he provided? If not, please explain why not.

HSBC Forfeiture: In deciding to pursue a forfeiture DPA with HSBC, rather than a criminal prosecution, you stated that your office "carefully considered whether there was sufficient admissible evidence to prosecute an individual and whether such a prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney's Manual". As you are aware, the Department's Equitable Sharing program would allow the HSBC forfeiture proceeds to be directly shared with the participating investigative agencies involved, including, for example, the New York County District Attorney's Office.

13. Please list the state and local law enforcement agencies involved in the HSBC investigation and/or the negotiations that resulted in the DPA.
14. Which of these agencies, if any, have submitted requests for Equitable Sharing?
15. How much money has been requested by each of these agencies through Equitable Sharing?
16. How much money, if any, has been disbursed to each of these agencies?
17. Can you confirm that these state and local law enforcement agencies were not incentivized to pursue a forfeiture DPA, in lieu of criminal prosecution, due to the prospect of winning a multimillion dollar Equitable Sharing disbursement?
18. While U.S. Attorney for the Eastern District of New York, did your office approve any settlement agreements that contemplated that the defendant pay money to any outside interest or advocacy groups either in addition to or in lieu of a civil penalty payable to the United States? If so, please provide the case names, the names of the outside groups, and the amounts paid to each group, and the amount by which any civil penalty was offset by such penalty.

19. **Follow-up to Question 4:** In response to my question whether you would continue to reward grant funding to sanctuary communities, you responded that you would need to balance the punishment of a community for not cooperating with the federal government with the purpose for which the grant is being rewarded. What do you mean by this statement? Please explain.
20. **Follow-up to Question 2:** I asked you whether you would continue the Department's policy of filing complaints against States for passing pro-enforcement immigration laws. You answered that you would "continue the Department's efforts to work closely with . . . state and local law enforcement partners to ensure the national security and public safety are our top priorities." The problem is the Department's policy is the exact opposite. The Department has not made efforts to work with state or local law enforcement or jurisdictions, but on the contrary, it has punished states for passing pro-enforcement immigration laws, and rewarded states and communities for not cooperating with ICE. So, given your previous answer, it appears you support the department's lack of effort in working with local law enforcement and communities. Or, will you discontinue the practice of suing states who pass pro-enforcement immigration laws?
21. **Follow-up to Question 3(a):** You did not answer my questions regarding sanctuary communities. I asked for your view on whether sanctuary communities that release criminal aliens back into the streets, rather than holding them until ICE can take custody of them, are a threat to national security and public safety. Your response was a general support of Department policy, not an answer to that question. In your view, is the release of criminal aliens by sanctuary communities a threat to national security and public safety?
22. **Follow-up to Question 5:** I want to know *your* opinion, not ICE's position, on whether aliens convicted of heinous crimes should be released outside a court order. Please provide me your opinion as to whether criminal aliens convicted of heinous crimes, such as homicide, sexual assault, abduction, and aggravated assault should be released for any reason besides a court order.
23. **Follow-up to Question 7:** I understand that you were not part of the decision making process on whether to appeal *Martinez*. I was not asking you why it was not appealed. I want to know, in your opinion, should *Martinez* have been appealed?
24. **Follow-up to Question 8(a):** I understand you were not part of implementing the 287(g) program. Again, my questions are aimed at understanding you, and your thoughts and position on these programs. Please tell me whether you personally support the 287(g) program and similar programs that authorize the federal government to delegate limited authority to state and locals who wish to participate in enforcing federal law.
25. **Follow-up to Question 8(b):** Do you personally believe that the 287(g) programs should be made available to state and local law enforcement agencies that want to protect their communities and cooperate with the federal government with regard to immigration enforcement?

26. **Follow-up to Question 9:** Please answer the following questions regarding Justice Americorps and 8 USC §1362:

- a. Do you agree that § 1362 is clear: the government may not provide a lawyer to immigrants in a removal proceeding at the expense of the taxpayers?
- b. Do you agree that Justice Americorps by its very nature has due process and equal protection issues?
- c. How can the administration avoid due process and equal protection issues if it provides lawyers to some immigrants in removal proceedings, but not to others?
- d. Couldn't such a policy lead to the requirement of providing a lawyer to all immigrants in removal proceedings?

27. **Follow-up to Question 12:** In response to my question on whether you support the catch-and-release actions of the administration, you responded that you would enforce the immigration laws “understanding the limited prosecutorial resources are best used to focus on the removal of criminals and those who pose a threat to safety of our nation.” Does this mean that you do support the catch-and-release actions of the administration? Please explain.

28. **Follow-up to Question 43:**

43(a): In your response you mentioned that the doctrine of Executive Privilege is constitutionally-based. It is well established that the *presidential communications* privileged is constitutionally based. It is equally well established that *deliberative process* materials may be privileged in limited circumstances, but that this privilege is one of judge-made common law.⁷ The Department, however, has attempted to conflate the two, and withheld documents from this committee based on an overbroad notion of “executive privilege” that includes both presidential communications and deliberative materials, created by low-level department employees, that are both *post-decisional* and *purely factual*. Please answer this straight forward question: do you believe that the *constitution* shields these deliberative materials from a congressional subpoena?

43(b): In your response you stated that, in your understanding, the scope of the privilege is the subject of ongoing litigation, and that the Department of Justice has taken the position that Executive Privilege is necessary to protect the President’s broad Article II functions, a position accepted by the district court. The district court did *not* accept the position the Department took in the Fast and Furious litigation that 64,000 documents were categorically shielded from a congressional subpoena because of “executive privilege,” due to separation of powers or otherwise. Rather, the court outlined the requirements for establishing a *deliberative process* privilege, noted that it was “*qualified*,” and stressed that the showing of need for those materials is subject to “a

⁷ *In re sealed case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

*lower threshold.*⁸ Moreover, the Attorney General stated that the Department had withheld materials that were *not privileged*.⁹ With that in mind, what authority does the Department have to withhold documents in response to a congressional subpoena that are *not privileged*, and from where does that authority derive?

43(c): Your response simply states an aspiration to avoid subpoenas. While I share your hope that improved DOJ cooperation with Congressional requests would eliminate the need for subpoenas, please provide an answer that is responsive to the question. Congressional subpoenas are a tool used by this committee and others in exercise of this branch's oversight responsibilities, and your position on the scope of privilege with respect to congressional subpoenas is of key interest to me and to this committee. Moreover, given that your predecessor was held in contempt of Congress for failure to comply with a subpoena, and that the Department is still in litigation with the House of Representatives over that subpoena, it seems reasonable to expect you would have given some thought to the questions at issue in that litigation. Accordingly, with respect to the deliberative process privilege, do you believe that a congressional subpoena is entitled to more weight than a Freedom of Information Act request?

43(d): In working to accommodate Congress's legislative and oversight interests, are you willing to provide deliberative, pre-decisional documents as your predecessor did when he produced drafts of the February 4, 2011 letter to me and emails about the drafting of that letter?

43(e): In working to accommodate Congress's legislative and oversight interests, would you argue (as your predecessor did) for withholding an entire category of documents based on a general assertion of "executive privilege" even when individual documents within that category—according to precedent and the admission of the Department itself—are *not in fact privileged*?

43(f): In your response you stated that in some instances, it becomes necessary for the President to assert Executive Privilege in order to preserve the separation of powers. Do you believe it is necessary for the President to assert executive privilege in order to preserve the separation of powers over non-deliberative or purely factual agency documents unrelated to communications with the White House?

43(g): As the Department itself has admitted, it asserted privilege over materials it does not deem to be protected under the traditional common law deliberative process doctrine. You state that you believe that "executive privilege," broadly, is "constitutionally based." Please explain how the constitution could protect agency documents that do not meet the qualifications for a common law deliberative process privilege.

⁸ Order at 3, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013) (emphasis added).

⁹ Def.'s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

29. **Follow-up to Question 44:** I appreciate your willingness to work with Congress to accommodate our “legitimate oversight interests.” However, as I stated in my initial set of questions, the experience in the Fast and Furious controversy seems to suggest that the congressional authority to pursue civil litigation is not sufficient to enforce its congressional subpoenas in a timely way, and that the Department’s policy and actions pursuant to 2 U.S.C. § 194 undermine congressional oversight activities and responsibilities. Given that you are familiar enough with the issues to cite the 1984 OLC opinion, please provide specific answers to the specific questions that I posed on the issue of contempt. Additionally, do you disagree that the experience in the Fast and Furious litigation demonstrates the insufficiency of the criminal and civil contempt procedures to vindicate congressional interests in a timely way? If so, please explain why, given that the litigation is still ongoing three years later.
30. **Follow-up to Question 47(b):** Your response did not unequivocally condemn the use of DOJ and White House coordinated “leaks” against a Committee Chairman conducting oversight as an inappropriate use of the Department’s Office of Public Affairs. While you may not have been previously familiar with the incident described in my question, the emails referenced are publicly available and have been written about in the press. Without regard to that incident, however, do you reject as improper any use of Justice Department resources or personnel to target Senators or Members of Congress with “leaks”? If no, please explain why not?
31. **Follow-up to Question 49:**
- 49(a): The DOJ OIG report regarding its investigation of Ms. Attkisson’s complaint determined that it was unable to substantiate Ms. Attkisson’s allegations with respect to her *personal* computer, but not with respect to her *work* computer.¹⁰ Moreover, CBS News has issued a public statement that Ms. Attkisson’s work computer was compromised.¹¹ The cyber-attacks on Sony and other U.S. companies have prompted the administration to launch a brand new agency.¹² It would seem that the hack of a major news outlet would warrant similar concern. Moreover, the OIG has neither the resources nor the jurisdiction to investigate a hack of unknown origin into CBS News systems. In light of this information, do you believe the FBI has any responsibility to investigate and determine whether Ms. Attkisson’s CBS computers were hacked and by whom? If not, please explain why not.
- 49(b): In your response you mentioned that it is your understanding that the Department’s Office of Inspector General has conducted an independent investigation of this matter. Yet, given that the OIG’s investigation could not include any examination of CBS computers, what steps will you take to ensure that there is a more complete and thorough

¹⁰ T. Becket Adams, Sharyl Attkisson: What was left out of reports on hacking, Washington Examiner (Feb. 3, 2015).

¹¹ See E. Wemple, CBS News confirms multiple breaches of Sharyl Attkisson’s computer, Washington Post Blog (June 14 2013).

¹² Obama administration announces new cybersecurity agency, Fox News (Feb. 10, 2015).

investigation of the CBS hack while ensuring independent oversight in the event that evidence is uncovered of any potential government agency or contractor involvement?

49(c): In light of the fact that the DOJ OIG was not able to fully investigate the CBS hack, please provide a specific response to my question in subsection c.

32. **Follow-up to Question 52(a):** In your response to my question about whether you would report your travel on FBI jets as required under OMB Circular A-126, you responded with “As the United States Attorney for the Eastern District of New York, I have not had the occasion to study this issue and am not familiar with the specific reporting requirement for the official travel on government aircraft.” Regardless of your familiarity with the reporting requirement (footnoted below)¹³, do you pledge—in the spirit of transparency—to report your non-mission travel to the General Service Administration semiannually? If not, please explain why not.

33. **Follow-up to Question 53:**

53(a-c): In your response, you noted that “administrative leave is appropriate in some circumstances.” Please describe the circumstances in which you believe administrative leave is appropriate.

53(b): Given that the Department had 1,849 plus employees on administrative leave for more than 30 days from fiscal years 2011-2013— in spite of policy that limits it to 10 working days¹⁴—do you believe it should be used less frequently? If not, please explain why not. Will you pledge to review the use of administrative leave at the Department and work to ensure that exceptions to the Department’s 10-day limit are granted less frequently than they currently are? If not, please explain why not.

34. **Follow-up to Question 54(b):** Your response to this and several other questions about the Inspector General’s right of access to Department records indicated your willingness to provide documents “necessary for him to complete his reviews.” However, the law gives him access to all records of the Department without regard to any determination by the Attorney General about whether they are necessary for him to complete his reviews. When you say you are committed to providing the Inspector General everything necessary to complete his reviews, do you mean everything that is necessary in your judgment or everything that is necessary in the Inspector General’s independent judgment?

35. **Follow-up to Question 55(g):** As justification for excluding attorney misconduct from the OIG’s jurisdiction, you cite the historical expertise of OPR in dealing with attorney misconduct allegations. However, the examples I cited in the other subparts of Question

¹³ OMB Circular No. A-126, *Improving the Management and Use of Government Aircraft* (May 22, 1992). Agencies that use government aircraft shall report semi-annually to GSA each use of such aircraft for non-mission travel by senior Federal officials, members of the families of such officials, and any non-Federal travelers. Such reports shall be in a format specified by GSA and shall list all such travel conducted during the preceding six month period. The report shall include: (i) the name of each such traveler, (ii) the official purpose of the trip, (iii) destination(s)...

¹⁴ GAO, *Use of Paid Administrative Leave*, GAO-15-79 (Washington, D.C.: October 2014).

55 illustrate that the lack of transparency, lack of statutory independence, and lack of consistency can lead to a diminished public trust in OPR's ability to impose accountability. If confirmed, will you pledge to personally review the cases I cited that give rise to this concern? If not, please explain why not.

36. **Follow-up to Question 75(c):** It is your understanding that the Department continues to monitor qui tam cases and may, in appropriate circumstances, further investigate, seek to intervene for good cause, and/or attempt to negotiate a settlement. Are there any circumstances in which it would be appropriate for the Justice Department to negotiate settlement of a non-intervened FCA case without qui tam counsel's involvement? Did the Eastern District of New York, under your leadership, ever pursue settlement negotiations in a qui tam case, and did you consult with qui tam counsel?
37. **Follow-up to Question 78(a-f):** Please answer subparts (b), (c), and (e), which were not addressed in your response. Regarding subpart (d), you indicated that sometimes the USAO with a nexus to the matter is recused and another USAO investigates instead. Was another USAO recused from investigating in this instance? Was it the District of Arizona? If so, why was this matter not transferred to the Southern District of California, as the other Fast and Furious-related matters were, in light of the conflicts in the District of Arizona? Please describe in detail the process by which the matter came to your office and any communications you may have had about whether your office was appropriate one to take on the responsibility and why.
38. **Follow-up to Question 79(b-c):** Your response failed to address subparts (b) and (c). Please answer those specific questions about what steps you would take if confirmed to determine the extent to which ATF is photocopying or photographing form 4473s *en masse* during annual inspections and whether such a practice is appropriate or should be sanctioned by the Department.
39. **Follow-up to Question 15:** I asked you a question concerning Justice Breyer's dissenting opinion in *McCutcheon v. FEC*, in which he wrote that "the First Amendment advances not only the individual's right to engage in political speech, but also the public's interest in preserving a democratic order in which collective speech *matters*" (emphasis in original). You stated that you "ha[d] not had the opportunity to delve into the academic debate about whether certain constitutional rights are individual or collective." You also stated in response to what other rights were collective that "[t]here undoubtedly are certain rights that are fundamental to our democracy that can only be meaningfully exercised with other people, such as the right to assemble and other associational rights."
- a. Is there any actual "academic debate about whether certain constitutional rights are individual or collective"? Do you believe there is any serious debate to be had on this subject? Has any Supreme Court decision ever found any right in the Bill of Rights to be collective?
 - b. Regardless of whether you ever considered the question as United States Attorney, does the First Amendment protect "collective" rights?

- c. If so, what other collective rights does the Bill of Rights protect?
40. **Follow-up to Question 19:** When I asked for your view of the constitutional duty of the Executive “to take Care that the Laws be faithfully executed” as contained in Article II, sec. 3 of the U.S. Constitution, you replied, “The President has the constitutional obligation to take care that the Constitution and laws of the United States are faithfully executed by the Executive Branch.” Respectfully, I asked for your view of the constitutional text, not its repetition. Please provide a detailed answer that reflects your view of the Executive’s obligations under the Take Care Clause.
41. Will you appeal the federal district court’s ruling in *Mance v. Holder*, which held unconstitutional a federal ban on the direct sale of handguns for Federally Licensed Dealers to out of state residents?

Senator Grassley, Chairman
Questions for the Record
Sharyl Attkisson

On day two of the hearing for the United States Attorney General nominee, on January 29, 2015, Senator Whitehouse placed into the record a redacted copy of an Inspector General report of its investigation into your allegations of remote intrusion of your computers.¹ Some in the media have cited this report as disputing many of your allegations, if not disproving them outright.²

According to CBS News, however, its forensic analysis found that your work computers were accessed by an unauthorized, external, and unknown party on multiple occasions in late 2012.

1. In your April 2013 complaint to the Office of the Inspector General (OIG) and in other communications with OIG, how many of your computers did you report as intruded and which ones?
2. Did the Office of the Inspector General (OIG) examine all of those computers?
3. Specifically, did OIG examine any of your work computers owned by CBS?
4. Did OIG examine any reports of the CBS News' forensic analysis that found evidence of intrusion?
5. Regarding the OIG's alleged "stuck backspace key" finding:
 - a. Did the OIG examine your personal computer to see if it could recreate the problem or detect a stuck backspace key?
 - b. Did the OIG question you as to whether you experienced this problem in the past or afterward?
 - c. Did the OIG provide you with evidence that a "stuck backspace key" can erase pages of material in a matter of few seconds, as you allege to have happened with your computer?

¹ U.S. Senate Committee on the Judiciary, *Attorney General Nomination*, January 29, 2015, <http://www.judiciary.senate.gov/meetings/attorney-general-nomination-part2>.

² Julian Hattem, "Watchdog: Attkisson wasn't hacked, had 'delete' key stuck," *The Hill*, January 29, 2015, <http://thehill.com/policy/technology/231225-doj-watchdog-ex-cbs-reporter-wasnt-hacked-had-delete-key-stuck>; Erik Wemple, "Justice Department's IG report disputes Attkisson's computer-intrusion allegations," *The Washington Post*, January 29, 2015, <http://www.washingtonpost.com/blogs/erik-wemple/wp/2015/01/29/justice-departments-ig-report-disputes-attkissons-computer-intrusion-allegations/>.

- d. Regarding the OIG's alleged "common cable" finding:
 - i. Did OIG physically inspect the cable itself?
 - ii. Did you ever communicate your concerns about the cable to your internet service provider? If so, what was the provider's response?
 - iii. Did you communicate to OIG the provider's comments to you concerning the cable? If so, what was the OIG's response?
- e. Did OIG rule out or dispute any of your allegations? If so, which ones, and what is your response?
- f. Do you have any other comments regarding the OIG report and/or the way it is being covered by some members of the press?

**Senator Grassley, Chairman
Questions for the Record
Sheriff David A. Clarke, Jr.**

1. What has your experience been, as a local police officer, working with the local U.S. Attorney's Office in prosecuting criminal cases? Which federal law enforcement agencies does the Milwaukee County Sheriff's Office work with? Does your office participate in any task forces with federal law enforcement?
2. What types of offenders are referred to the federal system for prosecution and for what types of crimes? Are these the types of crimes that are the most problematic in the Milwaukee County communities? Do the majority of cases going through the federal system involve offenders previously arrested or prosecuted in the state? What crimes do the repeat offenders mostly commit?
3. Does it make a difference when these offenders are prosecuted in the federal rather than the state system? Please explain.
4. You testified that criminals were afraid of the federal system. For example, you testified that to convicted felons, it means nothing to be prosecuted at the state level. Why is this the case? How is the federal system different?
5. Based on your experience, have federal mandatory minimum sentences helped in the communities you've worked in? If so, how?
6. Why would altering federal sentences, including mandatory minimum sentences for drug offenses, be short-sighted? Do you think that lowering or dispensing with federal mandatory minimum sentences would hurt crime victims?
7. What were the circumstances of the death of 10 year old Sierre Buyton? How many prior arrests and convictions did the offenders who shot and killed her have?

Senator Grassley, Chairman
Questions for the Record
Professor Nicholas Rosenkranz

1. The Department has argued in the Fast and Furious litigation that executive privilege is more than just a Presidential privilege, but that it also establishes a Constitutional shield for the “deliberative process” of lower level agency officials. However, the deliberative process privilege is traditionally a common law doctrine and one of the exemptions in the Freedom of Information Act—not a Constitutional privilege of equal standing with the inherent Constitutional power of Congress to conduct oversight inquiries. Deliberative process also traditionally applies only to content that is deliberative and pre-decisional.¹ It does not shield material created after a decision is made, or that is purely factual material.

Moreover, the Attorney General has sought to use this exceedingly broad notion of privilege to justify withholding documents that he has stated *are not privileged*. On November 15, 2013, the Attorney General acknowledged in the Fast and Furious litigation that he was withholding documents responsive to the House subpoena that “do not . . . contain material that would be considered deliberative under common law or statutory standards.”² Furthermore, the OLC opinion on the President’s assertion of executive privilege suggests that the privilege even applies to a document, “regardless of whether a given document contains deliberative material.”³

Yet, the Department *did* produce deliberative, pre-decisional material prior to the Feb. 4, 2011 gunwalking denial letter to me, despite its claim now that such material is privileged. The Department conceded that Congress had a clear interest in finding out whether officials knew before it was sent that the Feb. 4th letter was false. Thus, it provided pre-Feb. 4th material—even though it was pre-decisional and deliberative. However, the Department still refuses to concede that Congress has an interest in discovering how officials learned that the letter was false *after it was sent*.

Thus, it refused to provide post-Feb. 4th material—even though it is post-decisional and factual in nature. The Department categorically withheld *all* records from after the Feb. 4th letter until Election Day 2014. Only then, after a court order, did it finally produce to the House Committee post-Feb. 4th documents that contained purely factual, post-decisional material.

¹ *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

² Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

³ 36 Op. O.L.C. 1, 3 (June 19, 2012).

- a. What is the scope of executive privilege, particularly over agency documents unrelated to the President?
 - b. Does the President have an executive privilege to withhold documents subpoenaed by Congress that have nothing to do with advice or communications involving the White House? If so, what is the legal basis for that claim?
 - c. Congress created a statutory deliberative process exception for documents subject to Freedom of Information Act requests. Do you think a similar exception applies to congressional subpoenas, or are requests from Congress entitled to more weight?
 - d. Are deliberative documents just as immune from Congressional scrutiny as they are from FOIA requestors?
 - e. Can the President assert executive privilege over deliberative material, as the Office of Legal Counsel opinion suggested, “regardless of whether a given document contains deliberative content,” and even where the material is post-decisional?
 - f. The OLC opinion also claims that providing Congress with non-deliberative or purely factual agency document would raise “significant separation of powers concerns.” Do you agree, and if so, why?
 - g. Given that non-deliberative, purely factual agency documents are clearly not considered part of any protected “deliberative process” under common law or statute, what is the legal justification for withholding such documents under Congressional subpoena?
2. In the *Fast and Furious* litigation, the Department has relied on an extremely broad notion of executive privilege in its refusal to produce non-deliberative, post-decisional documents that would help Congress understand when and how the Department came to know that its Feb. 4, 2011 letter to me denying gunwalking was false. Specifically, the Department categorically refused, until Election Day last year, to produce *64,000 documents*—even though the Attorney General recognized that at least some of those documents “[did] not . . . contain material that would be considered deliberative under common law or statutory standards.”⁴ The OLC opinion on the matter suggests that assertion of privilege is proper “regardless of whether a given document contains deliberative material.”⁵

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The Department relied on this overbroad view of executive privilege when it declined to bring the congressional contempt citation of Attorney General Holder before a grand jury.⁶ The Department sent this denial letter to the Speaker of the House before the contempt citation even reached the U.S. Attorney.⁷ The U.S. Attorney failed to answer my questions seeking an explanation of the facts and circumstances sufficient for Congress to determine whether he made an independent judgment regarding the refusal to present the citation.⁸

The law states that it is the “*duty*” of the U.S. Attorney “to bring the matter before the grand jury for its action.”⁹

- a. What does it mean for the U.S. Attorney to have a “*duty*” to present a congressional contempt citation to a grand jury?
- b. If the U.S. Attorney has any discretion in cases where there is a claim of Executive Privilege, does he also have an obligation to make an independent evaluation of such a claim? If not, please explain why not.
- c. Under the Department’s interpretation of the statute, what is left of the Congressional contempt power against any agency able to convince the President to assert executive privilege?
- d. Under the Department’s interpretation of the statute, what safeguards against a President’s improper claims of executive privilege if not the independent legal judgment of the U.S. Attorney charged by statute with presenting the contempt citation to a grand jury?
- e. The Department relies on its own OLC opinions, which claim, among other things, that the Department should not prosecute officials for contempt at least in part because Congress can resort to civil litigation to enforce its subpoenas. However, it is clear from the delays in the Fast and Furious litigation that this enforcement tool is insufficient to ensure that Congress has adequate access to information to carry out its oversight responsibilities. The House Committee has had to re-issue the subpoena twice to avoid the case being mooted at the beginning of each new Congress. This gives the impression that the Department is delaying the process in hopes that political events may allow it to avoid a judicial resolution. What actions would you advise Congress to

⁶ Letter from Senator Charles E. Grassley to U.S. Attorney Ronald Machen (June 29, 2012), at 2.

⁷ *Id.* at 1.

⁸ *Id.* at 1-2.

⁹ 2 U.S.C. § 194 (emphasis added).

take in order resolve the dispute or vindicate its interests in obtaining the documents in a more timely way in a civil suit filed after a contempt citation?

- f. Do you believe that, if confirmed, the nominee should re-evaluate the Department's litigation strategy, the merits of its positions, and refusal to settle the case up to this point?

Senator Grassley, Chairman
Questions for the Record
Professor Jonathan Turley

1. The Department has argued in the Fast and Furious litigation that executive privilege is more than just a Presidential privilege, but that it also establishes a Constitutional shield for the “deliberative process” of lower level agency officials. However, the deliberative process privilege is traditionally a common law doctrine and one of the exemptions in the Freedom of Information Act—not a Constitutional privilege of equal standing with the inherent Constitutional power of Congress to conduct oversight inquiries. Deliberative process also traditionally applies only to content that is deliberative and pre-decisional.¹ It does not shield material created after a decision is made, or that is purely factual material.

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take in order resolve the dispute or vindicate its interests in obtaining the documents in a more timely way in a civil suit filed after a contempt citation?

- f. Do you believe that, if confirmed, the nominee should re-evaluate the Department's litigation strategy, the merits of its positions, and refusal to settle the case up to this point?

Questions for Loretta Lynch from Senator Hatch

1. On April 25, 2013, Professor Paul Cassell of the University of Utah College of Law testified before the House Judiciary Subcommittee on the Constitution regarding implementation of crime victims' rights statutes. These include the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, and the Crime Victims Rights Act, 18 U.S.C. §3771, both of which I helped to enact. He suggested that your office had failed to follow these statutes in a sealed case involving a racketeering defendant who had cooperated with the government. Specifically, he cited documents appearing to show that your office failed to notify victims of the sentencing in that case and had arranged for the racketeer to keep the money he had stolen from victims, even though the law makes restitution mandatory. Please explain in detail how your office protected the rights of crime victims in this case and, in particular, how it complied with the mandatory restitution provisions of these two statutes.

2. For several years, then-Senator Joe Biden and I worked to insure that the Justice Department supported youth mentoring organizations. We helped groups like the Boys and Girls Clubs of America greatly expand the number of those they serve by partnering with the Office of Justice Programs, which you will oversee if appointed to be Attorney General. In recent years, the President's budgets have proposed to reduce funding for youth mentoring grants and Congress has restored and even increased that funding. Can you assure me that, as Attorney General, you will work with OJP and others to make sure that funds are directed where they can do the most good and maximize the delivery of needed services?

3. In your hearing on January 28, I urged you to enforce laws prohibiting child pornography and to help victims receive restitution. Adult obscenity also lacks First Amendment protection and harms individuals, families, and communities. It is connected to sexual exploitation and violence against women as well as to human trafficking and is a destructive force in marriages. Even though the Obscenity Prosecution Task Force has been disbanded and prosecution of adult obscenity brought back under the Child Exploitation and Obscenity Section, will you commit to aggressively enforcing the adult obscenity laws and provide current data about the cases initiated and prosecuted by the Department that involve only adult obscenity?

4. I understand that the Justice Department is in the process of reviewing the ASCAP and BMI consent decrees. I want you to know how interested I am in this process and how important it is to the future of songwriters. Will you commit to making meaningful revisions to the decrees as soon as possible?

5. It has been reported that the Justice Department systematically targets lawful businesses by pressuring financial and banking services providers to stop doing business with firearm and ammunition companies and others dubbed "high risk." Do you believe that this type of targeting is appropriate and will you continue his practice if appointed to be Attorney General?

6. Several years ago, the ATF was removed from the Treasury Department and became a stand-alone agency and the Department of Homeland Security was created. The ATF and DHS often work together and share many of the same tasks. Do you believe the ATF should remain a separate agency or should it be merged with DHS?

7. I disagree with the Justice Department's decision not to enforce federal marijuana laws in states that have legalized marijuana. It sends the wrong message to our youth and demonstrates disregard for the rule of law. We should all agree, however, about the need to continue fighting drug trafficking organizations and the dangers they cause. In my state of Utah and other western states, drug trafficking organizations divert rivers and streams, clear cut timber, pollute the environment, and even place booby traps in the course of illegally growing marijuana on public lands. I recently introduced legislation with Sen. Feinstein to address these problems, S.348, the Protecting Lands Against Narcotics Trafficking Act. It enhances penalties for growers who degrade the environment and create public safety hazards and creates a fund to remediate environmental harms cause by illegal marijuana cultivation. Will you commit to making the prevention of marijuana growth on federal land a priority and to ensuring that prosecutors use the tools that my bill provides?

**Question for the Record of Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee,
Hearing on the Nomination of Loretta Lynch to Serve
as Attorney General of the United States**

In 2008, following thorough congressional hearings, agency consultations, and stakeholder outreach, Congress passed and President George W. Bush signed Public Law 110-344, the Emmett Till Unsolved Civil Rights Crime Act, into law. Throughout its evolution, Pub. L. 110-344 enjoyed broad, bipartisan, bicameral support; the bill passed the U.S. House of Representatives by a vote of 422-2 and was unanimously adopted in the Senate. I was an original cosponsor on the Senate side along with several other senators, while Congressman John Lewis was the lead cosponsor on the House side.

The Emmett Till Unsolved Civil Rights Crime Act established an intensive, 10-year collaborative effort to codify the Department of Justice's Cold Case Initiative. It authorized the designation of a Deputy Chief of the Criminal Section of the Civil Rights Division and a Supervisory Special Agent in the Civil Rights Unit of the Federal Bureau of Investigation to coordinate and lead intensive investigations of open, civil rights cases. These designees would work with the Department of Justice's Community Relations Service and State and local law enforcement officials to thoroughly investigate unsolved civil rights murders and bring closure and justice to the victims' families, friends, loved ones, and communities.

Will you review the Department's implementation of the bill and work with the bill's sponsors and the Members of this Committee to ensure that the goals of this important law are fully realized?

Attorney General Nomination Hearing

January 28–29, 2015

Questions of Sen. Lee

Questions for Ms. Lynch:

1. As the Nation's chief legal officer, the Attorney General is responsible for giving the President and other government agencies candid advice about the legality of proposed Executive action. With that in mind, please answer the following:
 - a. If confirmed, you (or the Office of the Legal Counsel under your supervision) would be asked to definitively opine on the legality of a variety of proposed Executive actions. As an experienced lawyer, you know that often both sides of a legal dispute can muster reasonable arguments in their defense. And yet one side's arguments, however reasonable, are nevertheless wrong—or at least weaker than those opposed to them. In your view, is it the duty of the Department of Justice to give a favorable opinion of the legality of proposed action so long as reasonable arguments can be made in its defense? Or must the Department decide, *de novo*, whether those arguments are in fact correct?
 - b. At your hearing, you testified repeatedly that you had reviewed the OLC memo concerning the legality of the President's executive action on immigration, and found its arguments "reasonable." Do you agree that, if confirmed, you must independently determine whether those arguments are not just "reasonable" but in fact correct?
2. How would you describe your approach to statutory interpretation?
 - a. To what sources would you look in deciding a legal question that turned on interpretation of a federal statute?
 - b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a lawyer be capable of adducing a statute's purpose?

3. In the case of the Commerce Clause, apart from circumstances present in *Lopez* and *Morrison*, what are the limits on Congress's Commerce Clause power?
4. Do you believe that Congress has at any time overstepped its authority under the Commerce Clause since *Wickard*, other than in *Lopez* and *Morrison*?
5. Under the Supreme Court's decision in *Bolling v. Sharpe*, the Federal Government may not constitutionally discriminate on the basis of race. With that in mind, do you believe it is consistent with the constitutional equal-protection principle for Congress to require local governments or private employers to take explicit account of the racial impact of employment policies?
6. Do you believe that *Citizens United v. FEC* was correctly decided?
7. During a State of the Union address, President Obama said the *Citizens United* decision would allow "foreign corporations to spend without limits in our elections." Do you believe that is an accurate description of the holding of that case?
8. I would like to give you another opportunity to answer a question you were asked several times at your hearing about the limits of Executive power. Imagine the President decided that, because Congress had failed to act to reform the tax laws, the federal government would simply no longer collect any taxes above a 25% marginal rate. Could such an act be a constitutionally permissible exercise of prosecutorial discretion? Please include, in your answer, a yes or no.
9. INA § 212(d)(5)(A) limits the government's authority to parole aliens into the United States to certain limited circumstances. It provides in relevant part that parole may be granted "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." Nevertheless, USCIS's Form I-131 permits recipients of deferred action to obtain advance parole—*i.e.*, permission to leave the country and then be paroled back into the United States upon their return—for "educational purposes, employment purposes,

or humanitarian purposes.”¹ According to USCIS, “[e]ducational purposes include, but are not limited to, semester abroad programs or academic research” and “[e]mployment purposes include, but are not limited to, overseas assignments, interviews, conferences, training, or meetings with clients.”² Do you believe that an undocumented alien’s need to attend meetings with clients abroad presents an “urgent humanitarian reason[]” or a significant benefit to the American public within the meaning of INA § 212(d)(5)(A)?

10. If an inadmissible alien approached our border, without a visa, and asked to be paroled into the United States in order to take a business meeting in New York, or attend a conference in Washington, D.C., do you agree it would be unlawful to parole the alien into the country for that purpose?
11. Will you commit to independently determining whether USCIS’s advance parole program complies with INA § 212(d)(5)(A) and release your conclusions to the Congress?
12. In April 2014, DHS Secretary Jeh Johnson told the U.S. Council of Mayors that immigrants who entered this country illegally have “earned the right to be citizens.” Do you agree with that assertion?
13. You recently announced that your office was prosecuting, for conspiracy to commit murder, foreign terrorist fighters accused of engaging in combat with U.S. troops on battlefields abroad. What criteria were used to decide whether these combatants should be criminally prosecuted rather than detained under the law of war and prosecuted by military commissions under the Military Commissions Act?
14. Do you believe foreign terrorist fighters’ engaging in combat with American military forces is best described as a conspiracy to murder American nationals?
15. Are you concerned that Article III criminal trials afford enemy combatants the opportunity to summon our troops from their duties elsewhere in order to appear as witnesses in criminal court?

¹ See Instructions to USCIS Form I-131, OMB Doc. No. 1615-0013, at p. 4.

² *Id.* at p. 5.

16. At your hearing, you testified that civil asset forfeiture was a “wonderful tool” for law enforcement. No doubt that can sometimes be true, when the person who owns the seized asset is in fact guilty of using the asset to commit crimes. But our current laws permit the government to seize assets without first proving that guilt. Please answer whether you believe it is fundamentally just for the government to seize a citizen’s bank account on the belief that it contains the proceeds of crime, but without having to carry a burden to prove the owner’s guilt.
17. I understand from news reports that in 2012 your office froze bank accounts belonging to the Hirsch brothers, but did not file a criminal or civil complaint, and ultimately agreed to return the funds only if the brothers agreed not to attempt to recover their expenses in trying to persuade you to return their money. Please explain whether you believe this case is a good example of why civil asset forfeiture is an important law enforcement tool.
18. You testified that you understood that the Attorney General had discontinued the federal government’s previous program of adopting state and local seizures as its own. But the Attorney General’s order to which you referred contains several exceptions, one of which is for “seizures pursuant to federal seizure warrants, obtained from federal courts to take custody of assets originally seized under state law.” In your experience as a prosecutor, are you aware of any legal impediments to obtaining a federal seizure warrant, whether under Federal Rule of Criminal Procedure 41 or otherwise, for the types of property seized by state officials that were previously subject to asset-forfeiture adoption?
19. Dating back to the 1960’s and 1970’s, the Department of Justice has been concerned about organized crime and other criminal enterprises profiting from the proceeds of illegal gambling. By way of example, the American Gaming Association estimated that the Super Bowl would attract some \$3.8 billion in illegal wagers, which is 38 times the amount wagered lawfully. Please describe any actions you have taken as U.S. Attorney to combat illegal gambling; and please describe what can be done to better address the growing problem of illegal gambling.

**Senator David Perdue
Questions for the Record**

**On the Nomination of Loretta E. Lynch
To be Attorney General of the United States**

February 5, 2015

1. As a career federal prosecutor, I know you are familiar with the concept of prosecutorial discretion. What, if any, are the limits of the President's discretion to enforce federal law?
2. With respect to the President's executive action on immigration, please explain the legal basis for your belief that the Office of Legal Counsel memorandum setting forth the argument for the President's action is constitutional and "reasonable."
3. Please explain your view on how, or whether, the President's executive action on immigration comports with the Constitution's Take Care Clause and Congress's Article I authority over immigration and naturalization.
4. At your confirmation hearing, Senator Sessions asked whether you agreed that "someone who enters the country unlawfully" has a "civil right" to work. You responded:

I believe that the right and the obligation to work is one that is shared by everyone in this country, regardless of how they came here. And certainly if someone is here, regardless of status, I would prefer that they be participating in the workplace than not participating in the workplace.

- a. Please explain the legal basis for your assertion that all persons, including persons having entered the United States illegally, have "the right...to work."
 - b. Please explain whether you believe your assertion that all persons present in the United States have a right to work conflicts with provisions of Title 8, specifically, 8 U.S.C. § 1324a *et seq.*
5. It's now indisputable that the Internal Revenue Service ("IRS") targeted conservative organizations that were seeking to obtain tax-exempt status. Senate investigators with the Permanent Subcommittee on Investigations found that over 80% of the targeted groups had a conservative political ideology. The Department of Justice ("DOJ" or "Department") responded by initiating a criminal probe led by a Civil Rights Division attorney who had contributed to President Obama's campaign in 2012. Little, if any, progress has been made in that investigation thus far.

- a. With respect to IRS targeting of individuals and organizations who ostensibly identify with a conservative or Tea Party viewpoint, will you commit to reassignment of the DOJ's investigation to a special prosecutor if you are confirmed?
 - b. Do you believe it was appropriate to assign management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign?
 - c. Do you believe that assigning management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the DOJ?
 - d. If you are confirmed, will you commit to keeping Congress informed in a more timely way than the current DOJ leadership has about the status of the investigation?
6. National security is always of paramount importance for the Attorney General. The recent Paris attack and the rise of ISIS are episodes that show two emerging national security threats that you will confront, if confirmed: foreign fighters and so-called "lone wolf" attacks.
- a. In your view, does the recent emergence of these threats have any impact on the debate over the impending renewal of the Foreign Intelligence Surveillance Act of 1978 ("FISA")?
 - b. Do you believe that the current "bulk collection" regime under FISA Section 215 is lawful?
 - c. Do you believe that the incidental collection provision, Section 702, is lawful?
 - d. President Obama has indicated that he supports a legislative reform of Section 215's bulk collection regime. What are your thoughts on amending Section 215?
 - e. Do you think law enforcement currently has sufficient investigative and legal authority to address the increasing threat from foreign fighters and "lone wolves"?
7. If you are confirmed, would the FBI, ATF, or any other DOJ agencies be permitted to allow criminals to obtain firearms as part of investigations undertaken by your Justice Department?

If so, please describe the circumstances under which you believe such operations would be appropriate.

8. Are you committed to transparency between the DOJ and Congress, and will you commit to prompt, complete, and truthful responses to requests for information from Congress about outstanding issues related to Operation Fast and Furious?
9. The DOJ announced two weeks ago that two Yemeni nationals charged with conspiring to murder American citizens abroad and providing material support to al-Qaeda will be prosecuted by your office in the Eastern District of New York. What specific circumstances that you can address here lead you to believe that civilian courts are a more appropriate or effective venue than military tribunals for the prosecution of the Yemeni nationals that have been charged by your office?
10. Do you believe that detainees currently being held at the United States Naval Base at Guantanamo Bay, Cuba, are entitled to criminal trials in the civilian court system within the United States?
11. In 2013, the DOJ intervened in litigation over the Louisiana Scholarship Program, a state initiative that provides school vouchers to low-income families. An analysis by the State of Louisiana found that the program promoted diversity in Louisiana schools and actually assisted in speeding up federal desegregation efforts. Most of the schoolchildren who benefit from this program are members of minority groups. This year, more than 13,000 students applied and nearly 7,500 schoolchildren were awarded a scholarship voucher. These children now get the chance to excel and attend high-quality schools that their parents can choose for them because of the program. Ultimately, after public pressure, the Justice Department backed off trying to kill the program entirely, but still insisted that the state provide demographic data about the students to a federal judge overseeing the lawsuit. Accordingly, now Louisiana has to provide data for the upcoming school year and for every school year as long as the program is in place.
 - a. Do you agree with the DOJ's decision to intervene in this case?
 - b. If confirmed, will you use Justice Department resources, like your predecessor has, in an effort to obstruct, monitor, or regulate school-choice programs?
 - c. Will you commit to asking the federal district court with jurisdiction over this case to discontinue the reporting requirement if you are confirmed?

12. A 2013 report by the DOJ's Inspector General revealed disturbing systemic problems related to the operation and management of the DOJ's Civil Rights Division. If confirmed, will you commit to implementing the recommendations made by the Inspector General in that report?
13. At your confirmation hearing, I asked you about the Francois Holloway case and why you consented to an order by Eastern District of New York Judge John Gleeson vacating two of Mr. Holloway's convictions for armed carjacking. In your response, you mentioned "a judicial proceeding before the court at that time" that "the court wanted us to take a second look at."
 - a. Please describe what you meant by the term "judicial proceeding before the court."
 - b. Which party initiated the "judicial proceeding before the court" that you referred to in your answer?
 - c. You stated that "our view was that we had to look at the case consistent with many of the initiatives that we were being put in place now by the DOJ certainly with respect to clemency and with respect to how we look at offenders who have served significant time." Please state the DOJ initiatives you consulted in your reexamination of the Holloway sentence and identify any initiatives on which you based your decision to consent to Judge Gleeson's order vacating Mr. Holloway's armed carjacking sentences.
 - d. Please identify any DOJ initiatives that provide for early release for violent offenders or recidivist violent offenders like Mr. Holloway.
 - e. You testified that you reconsidered whether to consent to an order to vacate Mr. Holloway's sentence "numerous times." Please explain why you ultimately consented to the vacatur after initially refusing to and suggesting to the court that Mr. Holloway contact the Office of the Pardon Attorney or seek executive commutation of his sentence.
 - f. Mr. Holloway's case had achieved a remarkable degree of finality – his appeal was rejected by the Supreme Court and he had been sentenced decades before Judge Gleeson released him, effectively, for time served. Please state the legal and policy basis for your decision to reexamine the case given the degree of finality that it had achieved.

- g. You stated that your office had “the ability to let the judge review [Mr. Holloway’s] sentence again by keeping it in the court system.” Please explain your understanding of the circumstances under which federal prosecutors should consent to review by a federal judge of sentences which have achieved finality and explain when federal prosecutors should act, as you testified, to “keep[]” those sentences “in the court system.”
 - h. Do you agree with Judge Gleeson, who wrote in his May 14, 2014, memorandum in the Holloway case, that your prosecutors from the Eastern District of New York employ “ultraharsh mandatory minimum provisions to annihilate a defendant who dares to go to trial,” like Mr. Holloway?
 - i. Do you believe that the prosecutors who tried Mr. Holloway employed “ultraharsh mandatory minimum sentences to annihilate” him because he exercised his constitutional right to a jury trial?
 - j. Do you agree with the recommendation of the U.S. Sentencing Commission in its 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, that Congress should amend 18 U.S.C. § 924(c) to confer on federal district judges the discretion to impose concurrent sentences under that provision?
 - k. Please describe with particularity – citing case numbers, captions, etc. – any other cases in which your office, during your tenure as U.S. Attorney, consented to an order vacating convictions under 18 U.S.C. § 924 or any other criminal conviction.
14. As a U.S. Attorney and the Chair of the Attorney General’s Advisory Committee, you are no doubt familiar with the DOJ’s recent “Smart on Crime” Initiative, which addresses a number of criminal justice issues like prioritizing prosecutions, sentencing disparities, recidivism, and incarceration of non-violent offenders. Attorney General Holder has advocated reduction of the federal sentencing guideline levels that apply to most drug-trafficking offenses, including trafficking of hard drugs like heroin. The Holder Justice Department also announced a new clemency initiative last year that invites clemency petitions from offenders who meet a number of criteria. Thousands of offenders, including drug traffickers, fall within those criteria.
- a. What are your views on those DOJ initiatives and proposals?
 - b. Do they make the work of federal prosecutors harder?

- c. Do they make the American People safer?
 - d. Are you going to continue them if you are confirmed as Attorney General?
 - e. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for violent offenders who have served a substantial portion of their sentences?
 - f. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for offenders who have received so-called "stacked" or consecutive mandatory minimum sentences under 18 U.S.C. § 924 or other provisions of federal law?
15. The 2013 Cole Memorandum explains the DOJ's priorities on enforcement of federal law regarding marijuana offenses. Several jurisdictions have recently legalized cultivation and distribution of marijuana for personal use, in effect, initiating a series of state regulatory regimes that contravene federal drug laws.
- a. Do you agree with the current DOJ enforcement policies and priorities outlined in the Cole Memorandum?
 - b. Do you consider the DOJ's policy, as it is being implemented now, to reflect legitimate enforcement discretion consistent with the Take Care Clause?
 - c. If you are confirmed, how do you plan to measure the effect of the DOJ's policy on the federal interest in enforcement of drug laws?
16. The recent hacking of Sony's computers has demonstrated that a major area of vulnerability to our national security and infrastructure is cyberattacks, often by foreign hackers or governments.
- a. In your view, what are the greatest threats we face from cyberterrorism?
 - b. What tools does law enforcement need, based on your experience as a U.S. Attorney, to protect networks and critical infrastructure?
17. In recent years, the DOJ has aggressively pursued states that have enacted a wide array of voter ID provisions. You have made a number of public comments about the DOJ's litigation in this area of the law and have pledged to continue litigation that Attorney General

Holder has initiated. Please describe, with particularity, examples of voter ID provisions that a state could enact which you believe would pass statutory and constitutional muster.

18. A number of commentators have expressed the opinion that voter fraud simply doesn't exist or the alternative opinion that, if it does, it is a minor problem with no real effect on the integrity of elections.
- a. Do you agree that voter fraud does not exist or is so insignificant that it does not threaten the integrity of elections?
 - b. Do you think that voter fraud is a *bona fide* issue that states should be entitled to address with voter ID laws?

19. You previously stated in the context of North Carolina's voter ID law that:

Fifty years after the march on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for....People try and take over the State House and reverse the goals that have been made in voting in this country....But I'm proud to tell you that the Department of Justice has looked at these laws, and looked at what's happening in the Deep South, and in my home state of North Carolina [that] has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits will continue.

Do you believe that North Carolina's voter ID law is a pretext for, or was motivated by, racial discrimination?

20. First Amendment freedoms that protect the press became a lot more tenuous during Mr. Holder's administration of the DOJ. In May 2013, the Department obtained phone records for the Associated Press ("AP") without the knowledge of that organization, reportedly as part of an investigation of an AP story on CIA operations in Yemen. It then came to light that in 2010 the Holder Justice Department obtained a warrant to search the emails of Fox News reporter James Rosen – the Department claimed that Rosen was a potential co-conspirator with a State Department contractor in violation of the Espionage Act. Since then, the DOJ has issued new guidelines governing how it obtains evidence from journalists. The guidelines maintain that notice of a subpoena may be withheld only if notifying the journalist would present a "clear and substantial threat" to an investigation or to national security.

- a. Do you agree that the Department's treatment of journalists has been heavyhanded and that reform of DOJ practices was necessary?
 - b. Do you believe that the DOJ investigations described above pose a serious risk of chilling free speech?
 - c. Do you support the new guidelines?
 - d. As a federal prosecutor, you are no doubt aware of the balance between individual liberties and the need to conduct thorough and effective investigations. Do the guidelines strike the right balance?
 - e. How would the Lynch Justice Department distinguish itself from the Holder Justice Department when it comes to investigation of journalists?
21. There have been significant developments recently at the DOJ regarding policies on civil asset forfeiture in response to abuses by U.S. Attorney's Offices and federal and state agencies. Attorney General Holder just announced that the DOJ will end the Equitable Sharing Program, which essentially apportions billions of dollars in seized assets between federal, state, and local authorities – a huge pool of money that clearly created a risk of encouraging aggressive, if not unlawful, seizures from individuals who are not charged with a crime, have not been indicted, and have not enjoyed any due process whatsoever. Your office in the Eastern District of New York alone has seized over \$100 million in recent years.
- a. Do you believe that there have been inappropriate or excessive seizures by your office or by the DOJ with respect to civil asset forfeitures, adoptive seizures, and equitable sharing practices? If so, please describe with particularity any such cases.
 - b. After inquiries by members of Chairman Grassley's staff, a company in your district, Hirsch Brothers, was recently returned \$500,000 that your office seized from it as part of a civil asset forfeiture. Please explain the basis for the seizure and the reason why the funds were returned only after a congressional inquiry was initiated.
 - c. Has your office implemented the reforms announced by Attorney General Holder?
 - d. What steps are you taking in your office to ensure that no additional individuals or companies like Hirsch Brothers will have their assets wrongfully seized?

- e. What steps do you plan to take, if confirmed, to ensure that the DOJ returns wrongfully seized assets promptly and does not continue to seize assets wrongfully?

Senator David Perdue
Second Set of Questions for the Record

On the Nomination of Loretta E. Lynch
To be Attorney General of the United States

February 13, 2015

References to Senator Perdue's first set of Questions for the Record are referred to below as "QFR" followed by the number of the relevant question.

1. In QFR #1, I asked you to explain your understanding of the limits of the president's discretion to enforce federal law. In your answer, you referred me to the Office of Legal Counsel but conceded that there are "of course, recognized constitutional limitations on the President's authority." Please state with particularity your understanding of the limits on the president's authority, making specific reference to the "constitutional limitations" you mentioned in your original answer. Please consult any relevant legal authorities, including Supreme Court precedent, *see, e.g.* Justice Jackson's *Youngstown* concurrence, in order to explain your understanding of the scope and nature of the limitations you cited.
2. In response to QFR #4a, you explained your "personal belief that it would be better for individuals in this country to be working to support themselves and their families and contributing to our economy rather than remaining unemployed." Notwithstanding your personal belief, if you are confirmed as Attorney General, will you commit to enforcement of all provisions of federal law that concern employment of illegal immigrants or other persons unlawfully within the United States?
3. In response to QFR #5a regarding whether you would commit to the assignment of a special prosecutor to the IRS targeting case, you stated that "the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment." Please explain whether you believe that the IRS targeting case would present: (1) a conflict of interest; or (2) other extraordinary circumstances in the public interest meriting the assignment of a special prosecutor. Essentially, please answer the original question either negatively or affirmatively: Will you commit to the assignment of a special prosecutor in this matter? Please answer "yes" or "no" and explain your answer.
4. In response to QFR #5b, you provided a form response that was identical to your response to QFR #5a. This is a straightforward, binary question that I request you answer either negatively or affirmatively: Do you believe it was appropriate to assign

management of the Department of Justice's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign? Please answer "yes" or "no" and explain your answer.

5. In response to QFR #5c, you provided a form response that was identical to your responses to QFRs #5a and #5b. Again, this is a straightforward, binary question that I request you answer either negatively or affirmatively: Do you believe that assigning management of the Department of Justice's investigation of IRS targeting to a Department of Justice lawyer who contributed to President Obama's campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the Department of Justice? Please answer "yes" or "no" and explain your answer.
6. QFR #7 asked whether your Department of Justice would use so-called "gunwalking" as a valid investigative technique. You did not answer the question and instead cited "guidance" issued to U.S. Attorney's Offices. Please state either negatively or affirmatively whether the Lynch Department of Justice will view gunwalking as a legitimate investigatory technique to be used by federal law enforcement agencies. Please answer "yes" or "no" and explain your answer.
7. In response to QFR #11 and its subparts regarding the Louisiana school voucher litigation, you stated that "I cannot comment on this issue because it is my understanding that it is in active litigation." Currently, the Department of Justice is not a party to that litigation. Accordingly, I again respectfully request that you answer QFR #11 and its subparts.
8. In response to QFR #11b, you stated that "I cannot comment on this issue because it is my understanding that it is in active litigation." That QFR, however, does not concern the Louisiana litigation but addresses prospective litigation that you may choose to undertake if you are confirmed. Accordingly, I again respectfully request that you describe whether you will use Justice Department resources, like your predecessor has, in an effort to obstruct, monitor, or regulate school-choice programs. Please answer "yes" or "no" and explain your answer.
9. In response to QFR #11c, you stated that "I cannot comment on this issue because it is my understanding that it is in active litigation." The question asked only whether your Justice Department would consent to discontinue the reporting requirement if you are confirmed. The Department of Justice is not currently a party to the litigation. Please answer "yes" or "no" and explain your answer.

10. QFR #12 addressed the 2013 report by the DOJ's Inspector General that revealed disturbing systemic problems related to the operation and management of the DOJ's Civil Rights Division and specifically asked whether you would commit to implementing those recommendations. Instead of answering either negatively or affirmatively, you stated that you would commit to ensuring "responsive[ness]." Please specifically answer whether you will commit to implementation of the 2013 report's recommendations, not whether you will ensure "responsive[ness]," as a general matter, to recommendations by the Inspector General.
11. In response to QFR #13c, you cited the "Smart on Crime" initiative as the basis for your decision to consent to Judge Gleeson's order to vacate Francois Holloway's sentences for armed carjacking. One of the five principles of the Smart on Crime initiative announced in the Attorney General's August 2013 report is "Protecting Americans from *violent crime*" (emphasis added). *Smart on Crime: Reforming the Criminal Justice System for the 21st Century*, Department of Justice (Aug. 2013), available at <http://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf> at 2. The Attorney General explained that "Smart on Crime" is designed to target "*non-violent, low-level offenses*" and "certain people who have committed *low-level, nonviolent* drug offenses, *who have no ties to large-scale organizations, gangs, or cartels...*" (emphases added). *Id.* at 3. The report further states that the Bureau of Prisons may consider reductions in sentences for inmates facing extraordinary and compelling circumstances "who did not commit *violent crimes*" (emphasis added). *Id.* The report repeatedly emphasizes that the initiative is aimed at low-level and nonviolent offenders. *See, e.g., id.* at 1-4. Accordingly, please explain your belief that the "Smart on Crime" initiative justified the early release of Francois Holloway, a violent, recidivist offender who organized and ran a chop shop that processed stolen and carjacked cars.
12. Please explain whether the fact that Francois Holloway faced years of back-up time for a New York State drug-trafficking conviction factored into your decision to consent to Judge Gleeson's order to vacate Holloway's sentences for armed carjacking.
13. Please describe with specificity – citing case numbers, captions, etc. – all cases handled by the U.S. Attorney's Office for the Eastern District of New York during your tenure as U.S. Attorney in which the "Smart on Crime" initiative, or any other Department of Justice initiative, was cited in support of the early release of any offender from Bureau of Prisons' custody.
14. If confirmed, will you promulgate Department of Justice initiatives that recommend early release for violent or recidivist offenders?

15. You responded to QFR #13d with generalities regarding the professional responsibilities of federal prosecutors and judges and did not answer the question. Please specifically identify any Department of Justice initiatives that recommend early release for violent offenders.
16. In response to QFR #14e, you wrote that "I do not support release of violent offenders for no corrections or public safety purpose." Do you believe that the release of Francois Holloway served a "corrections or public safety purpose"? If so, please explain your answer.
17. If confirmed as Attorney General, will you review the sentences of violent offenders and consent to early release if such release would, in your judgment, serve a "corrections or public safety purpose"?
18. In response to QFR #14f, you wrote that "I recognize that some reforms of existing mandatory minimum sentencing statutes are needed." Please explain with specificity the nature of the reforms you state is necessary, citing relevant provisions of Title 18. Please state also whether you believe that the consecutive mandatory minimum provisions under 18 U.S.C. § 924 require reform and/or elimination.

**Questions for the Record to US Attorney Loretta Lynch
Nominee to be Attorney General of the United States
From Senator Charles E. Schumer
February 5, 2015**

- 1) My home state of New York has faced an exponential increase in abuse of opioids, particularly heroin, over the last several years. What are some of the steps you will take as Attorney General to combat this burgeoning epidemic?
- 2) I was glad to see that the President has requested an increase to the Community Oriented Policing Services Programs in his recent budget proposal. The funding provided by the COPS program ensures that local law enforcement agencies have the resources they need to keep our communities safe. Will you continue to support programs such as COPS and the Byrne JAG program as Attorney General?
- 3) In 2012, Congress gave the Attorney General broad authority to use emergency scheduling powers for dangerous synthetic narcotics compounds that are often marketed to young adults. These compounds, labeled by titles such as “K2” or “Spice” pose a serious threat to our citizens. I have asked that the Drug Enforcement Administration work with the Department of Justice and the Attorney General to more quickly identify these compounds as they develop; as Attorney General, will you make this a priority in your work with the DEA?
- 4) Over the last several years I have advocated that federal law enforcement aggressively work to disable websites on the “dark web” that have assisted in the illegal sale of controlled substances, guns, and other dangerous contraband. “Silk Road” and “Silk Road 2.0” have been successfully taken down through the excellent work of the FBI, but more must be done as other sites emerge in their place. This is one of many reasons why I believe that it is important to increase the Department’s efforts in cybercrime prevention. As Attorney General, how do you think the Department can improve in this area?
- 5) In late 2013, Avonte Oquendo, a child with Autism Spectrum Disorder (ASD) went missing from his school in Brooklyn, and, tragically, was found deceased after a city-wide search over several months. With the help of Attorney General Holder, I worked to expand the acceptable uses for Byrne JAG grants to include programs for voluntary autism tracking devices ran by local law enforcement. Should you be confirmed as Attorney General, will you help me continue to promote this application of JAG funds? Will you commit to continue the Department’s efforts to find ways to address the issue of “wandering” in children with ASD?

Senator Jeff Sessions
Questions for the Record
Loretta E. Lynch, to be Attorney General of the United States

1. Do you believe that President Obama has exceeded his executive authority in any way? If so, how?
2. On August 6, 2014, just a few months before President Obama announced his executive amnesty, he said:

"I think that I never have a green light [to push the limits of executive power]. I'm bound by the Constitution; I'm bound by separation of powers. There are some things we can't do. Congress has the power of the purse, for example... Congress has to pass a budget and authorize spending. So I don't have a green light."

Do you agree with that statement?
3. Do you agree that Congress has a duty not to fund programs that are unconstitutional?
4. Do you agree that Congress has the power to fund programs it agrees with, and not to fund programs it disagrees with or considers to be unlawful?
5. On January 20, 2014, it was reported that two Yemeni nationals, Sadiq al-Abbadi and Ali Alvi, members of al Qaeda, had been charged with conspiracy to murder U.S. nationals abroad and providing material support to al Qaeda, and will be tried in United States federal court in your district, the Eastern District of New York. Both men fought against U.S. military forces on multiple occasions, and Al-Abbadi allegedly led an attack against U.S. forces in Afghanistan during which a U.S. Army Ranger was killed and several others were seriously wounded. On January 23, 2014, it was reported that Faruq Khalil Muhammad 'Isa, accused of orchestrating an attack that killed five U.S. soldiers in Iraq, will also be tried in the Eastern District of New York. It is undisputed that these individuals are foreign terrorists, captured abroad while engaged in armed conflict against U.S. forces. Do you agree that these individuals are unlawful enemy combatants and, as such, could be tried before a military commission and detained for the duration of hostilities under the law of war?
6. If an individual is charged with violations of the laws of war and appears to be an active and committed member of al Qaeda or another terrorist organization that has threatened the United States or its allies, would you support the detention of that individual as a prisoner of war so long as al Qaeda or that terrorist organization continues to threaten acts of war or terrorism against the United States or its allies?
7. Does the president have the power to detain terrorism suspects without trial in the United States? If so, for how long?

8. Do you agree that, under the laws of war and controlling case law, the United States military has the ability to detain enemy combatants until the end of hostilities without bringing charges?
9. Do you agree that in the civilian justice system, defendants are required to be told they have the right to remain silent and that interrogation must stop if they invoke that right, and that there is no such requirement in the military system for enemy combatants?
10. Do you agree that in the civilian justice system, when a suspect is interrogated, he has a right to counsel, the interrogator must tell him of that right, and the interview must cease until a lawyer arrives if the request is made, and that there is no corresponding right in the military system for enemy combatants?
11. Do you agree that in the civilian justice system, an individual must be brought promptly before a judge and be charged with a crime or released (formerly known as the "48-hour rule"), and that there is no such requirement in the military system for enemy combatants?
12. Do you agree that, in the civilian justice system, the Speedy Trial Act sets strict guidelines on how long after arrest a prosecutor has to present a case to a grand jury, and that there is no similar timeline by which the military must charge an enemy combatant who is detained during wartime?
13. In May 2011, in a speech before the American Association of Professional Law Enforcement, you stated:

"Military commissions have been strengthened, and whether you agree or disagree with [the] Congressional action that restricted Guantanamo Bay detainees to military commissions, the fact is there is no longer the presumption that terrorism cases will automatically be tried in federal court."

In 2009, President Obama signed legislation passed by a Democratic-controlled Congress strengthening the Military Commissions Act of 2006. While you have acknowledged that military commissions have been strengthened, you appear to be continuing to operate under the presumption that foreign terrorists captured abroad should be brought into the United States and put in a civilian judicial system. If confirmed, will you continue Attorney General Holder's policy that there is a presumption that foreign terrorists should be tried in Article III courts?
14. Do you believe that it should be the policy of the United States to negotiate with terrorists?
15. If confirmed, will you advise the president to keep in place the United States' longstanding policy of not negotiating with terrorists?

16. Do you support a permanent extension of the intelligence-gathering authorities under the Foreign Intelligence Surveillance Act (50 U.S.C. § 1805(c)(2)(B), 50 U.S.C. §§ 1861-2, and 50 U.S.C. § 1801(b)(1)(c)), which are set to expire on June 1, 2015?
17. During your hearing, you were asked a number of legal questions to which you demurred on the grounds that you needed more information, had not studied the issue, or were not sufficiently familiar with the “legal framework” governing a particular question. But when asked by the Ranking Member, you testified without hesitation that “waterboarding is torture . . . and thus illegal.” Please take this opportunity to explain the basis for your conclusion, including what steps you took prior to your testimony to form a reasoned opinion, and why you were more familiar with this area of the law than the subjects on which you declined to answer.
18. Section 8 of the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (Oct. 17, 2006), provides protection from prosecution for U.S. personnel involved in certain detentions and interrogations of enemy combatants occurring between September 11, 2001, and December 30, 2005. Please explain your understanding of the scope of this immunity.
19. Did you participate in the drafting of or provide input for the October 28, 2014 Executive Office for United States Attorneys’ policy memo directing that U.S. Attorneys should pursue only the most egregious marijuana offenses on Indian reservations that are growing and selling marijuana, even if those reservations are located within states where marijuana is illegal under state (and federal) law? If so, what was the scope and substance of your participation and/or input?
20. If confirmed, what actions would you direct a U.S. Attorney to take if an Indian reservation, located in a state where marijuana use is illegal under state law, legalized marijuana?
21. If confirmed, what actions would you direct a U.S. Attorney to take if an Indian reservation, located in a state where marijuana use is legal under state law, criminalized marijuana?
22. In his August 2013 memo to U.S. Attorneys, Deputy Attorney General Cole announced the Justice Department would essentially cease prosecutions in states that had legalized marijuana, as long as those states have “strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.” As Chairwoman of the Attorney General’s Advisory Committee, were you involved in drafting that memo? If so, please explain your involvement, including what you advised the Attorney General with regard to the policies set forth in the memo.
23. Attorney General Holder has advocated for reducing mandatory minimum sentences for drug trafficking, and has endorsed legislation that would reduce by at least half the mandatory minimum sentences for trafficking in heroin, methamphetamine, cocaine,

LSD, PCP, marijuana, and other opiates. A number of law enforcement groups, including the National Association of Assistant U.S. Attorneys (NAAUSA), the Federal Law Enforcement Officers Association, and the National Narcotic Officers' Associations' Coalition opposed that legislation. It was also reported that several other groups, including the Fraternal Order of Police, the National Sheriffs' Association, the International Association of Chiefs of Police, the National Association of Police Organizations, the Major County Sheriffs' Association and the National District Attorneys Association were very concerned that cutting mandatory minimums in half will severely impact their ability to secure a defendant's cooperation in indicting the "bigger fish" in a drug conspiracy. In a January 31, 2014 letter to this Committee, NAAUSA – which represents the interests of the 5,400 Assistant U.S. Attorneys nationwide – wrote:

"Mandatory minimums serve as an indispensable tool in enabling law enforcement and prosecutors to secure offender cooperation and dismantle criminal organizations. The current system of mandatory minimum penalties is the cornerstone in the ability of Assistant United States Attorneys and federal law enforcement agents to infiltrate and dismantle large-scale drug trafficking organizations and to take violent armed career criminals off the streets. Mandatory minimums deter crime and help gain the cooperation of defendants in lower-level roles in criminal organizations to pursue higher-level targets. They have been demonstrably helpful in reducing crime. Time and again, Assistant United States Attorneys have solved crimes and secured justice through the deterrent power of mandatory minimum sentences."

- a. Do you agree with NAAUSA's statement?
 - b. Do you agree that drug trafficking is a serious offense that is deserving of equally serious mandatory minimums in order to deter such behavior?
24. As a United States Attorney, what types of drug offenders have been your priority targets?
 25. If a member of a drug trafficking ring is apprehended while in possession of such a substantial amount of drugs so as to trigger a mandatory minimum sentence, and the individual cooperates, it is very common for the prosecutor to file a motion for "substantial assistance," which means that person will not receive a mandatory minimum even though they were carrying enough drugs to trigger the mandatory minimum. How often would you estimate this occurs in your office?
 26. Congress's purpose in creating sentencing guidelines was to ensure that the sentence a defendant received for a particular crime did not depend on the judge he or she happens to draw – a reality that has been characterized as "luck of the draw." Under the Supreme Court's decision in *United States v. Booker*, however, the federal sentencing guidelines are now advisory, rather than mandatory. Now that judges are no longer required to follow the guidelines, we are seeing the very disparities, including racial disparities, in sentences that Congress sought to correct. According to a 2012 report from the United States Sentencing Commission, "unwarranted disparities in federal sentencing appear to be increasing." If confirmed, will you commit to work with Congress to ensure that

federal courts take sentencing guidelines into account in every case to avoid unwarranted sentencing disparities?

27. The Supreme Court in *United States v. Rita* held that appellate courts may regard properly calculated within-guidelines sentences as presumptively reasonable. In view of this holding, do you believe it would improve compliance with the guidelines – and thereby reduce disparities – to adopt an appellate standard in line with the *Rita* decision? If you disagree, please cite the basis for your view.
28. As United States Attorney, you must have been contacted about the possibility of clemency in cases handled by your office. Did you ever endorse any of these suggestions (*i.e.*, did you ever agree that clemency was warranted in any case your office prosecuted)? If yes, please provide examples. If no, please explain why not.
29. Do you agree that robust enforcement of existing criminal laws deters the use of a gun during a criminal act?
30. Do you agree that before enacting new laws that restrict the constitutional rights of law-abiding citizens, we should enforce the laws already in place that apply to criminals?
31. If confirmed, will you commit to enforce existing criminal laws and not to seek new authorities that limit the rights of law-abiding Americans?
32. In April 2013, the Senate rejected measures that would have instituted a ban on so-called “assault weapons” and large capacity magazines, required universal background checks, and created new unnecessarily high criminal penalties for firearm offenses. In October 2014, Attorney General Holder referred to these as “really reasonable gun safety measures.”

Do you agree with Attorney General Holder’s statement?
33. Do you personally favor allowing concealed carry permits for law-abiding citizens?
34. Do you acknowledge that as head of the Justice Department the Attorney General has the responsibility to ensure that federal immigration laws are enforced?
35. According to U.S. Immigration and Customs Enforcement’s FY2014 Enforcement and Removal Operations Report, ICE’s efforts in removing convicted criminal aliens have been adversely impacted by “an increasing number of state and local jurisdictions that are declining to honor ICE detainees,” resulting in the release of criminal aliens into the community. The report states that since January 2014, state and local law enforcement agencies have refused to honor 10,182 detainees. It is my understanding that through September 2014, the recidivism rate for this group was a stunning 25 percent, including 5,425 subsequent arrests and 9,316 criminal charges. It is also my understanding that litigation by individuals and advocacy groups are a major factor in this

non-cooperation. If confirmed, will you commit to devote Justice Department resources to put a stop to this dangerous practice?

36. Pursuant to the Prison Rape Elimination Act (PREA), the Justice Department routinely withholds grants to state and local jurisdictions for noncompliance. If confirmed, would you support withholding State Criminal Alien Assistance Program (SCAAP) grants to jurisdictions that refuse to honor ICE detainees?
37. Do you agree that the decision to release criminal aliens in general poses an unnecessary and unreasonable risk to the public safety?
38. Do you support a role for state and local law enforcement, consistent with federal law, in enforcing federal immigration laws? Please explain your answer.
39. The 287(g) program, which trains local law enforcement to determine whether an individual is lawfully present, has been extremely successful. The website for U.S. Immigration and Customs Enforcement (ICE) once touted the program's success: "Since January 2006, the 287(g) program is credited with identifying more than 304,678 potentially removable aliens – mostly at local jails. ICE has trained and certified more than 1,300 state and local officers to enforce immigration law." In a statement last October, an ICE spokesperson said the 287(g) program "acts as a force multiplier for the agency and enhances public safety in participating jurisdictions by identifying potentially dangerous criminal aliens and ensuring they are removed from the United States and not released back into our communities." Nevertheless, the Obama administration has systematically dismantled the program, cancelling agreements with local law enforcement and slashing funding for the program, largely because amnesty advocates oppose the program. If confirmed, will you commit to working with Congress to rebuild the 287(g) program, and devote the necessary Justice Department resources to the program?
40. If confirmed, will you commit to reinstating Operation Streamline prosecutions and ensure that the Justice Department has or requests the resources necessary to expand the program across the entire southwest border?
41. Is accurately reporting one's income and properly filing one's income tax return an obligation shared by everyone in this country? If so, do you agree that someone who fails to do so lacks "good moral character" as required under the various provisions in the Immigration and Nationality Act? If not, please explain why not.
42. To my knowledge, the Office of Legal Counsel opinion regarding the president's executive action on immigration does not identify any statutory authority for the provision of Employment Authorization Documents to the majority of the individuals eligible for either the Deferred Action for Childhood Arrivals or the Deferred Action for Parents of Americans and Lawful Permanent Residents programs. Please identify the legal authority for the provision of Employment Authorization Documents to these

individuals. If you find that such authority does not exist, will you ask the Office of Legal Counsel to revise its opinion?

43. If confirmed, will you commit to conducting a thorough review of pending cases within the Executive Office for Immigration Review (EOIR) – the Immigration Courts and the Board of Immigration Appeals – to identify the source of the backlog in the system, and to providing the results of that review to this Committee within 60 days?
44. It is my understanding that EOIR has provided members of the Board of Immigration Appeals with an extremely generous, and perhaps questionable, teleworking program. If confirmed, will you provide a description of this policy to the Committee within 60 days?
45. Last year, the Board of Immigration Appeals issued a published decision in the *Matter of Chairez*, 26 I&N Dec. 349 (2014), which held that the United States Supreme Court’s decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013), applies to the analysis of criminal convictions in immigration proceedings. *Descamps*, and its predecessor cases (*Taylor v. United States*, 495 U.S. 575 (1990); *Shepard v. United States*, 544 U.S. 13 (2005)), arose out of concerns regarding the Sixth Amendment in the criminal sentencing context. Do you agree with the Board’s decision? If so, why should a strict, technical analysis, which can only benefit aliens with serious criminal convictions, be applied to civil immigration proceedings, where the Sixth Amendment does not apply? Is the safety of our communities more important, or the ability of a criminal alien to remain in this country?
46. 8 U.S.C. §1229a clearly states that an alien has the right of being represented – at no expense to the government – in removal proceedings. The Board of Immigration Appeals has a “Pro Bono Project,” in which it secures counsel for previously unrepresented aliens in cases on appeal with the Board.
 - a. Do you believe that this program complies with federal law?
 - b. If confirmed, will you direct the Board to stop using taxpayer resources to find counsel for aliens and eliminate this program?
47. The Department of Justice has provided federal funds for an AmeriCorps program to provide attorneys to aliens in immigration proceedings.
 - a. Do you believe that this program complies with federal law?
 - b. If confirmed, will you cease using taxpayer resources to provide attorneys for aliens in immigration proceedings and eliminate the program?
48. In the 2001 case *Zadvydas v. Davis*, the Supreme Court held that the government can detain an alien ordered removed for the initial 90 days allowed by 8 U.S.C. §1231(a)(2), and thereafter only for a period reasonably necessary to secure the alien’s removal. It is presumptively reasonable for the government to detain the alien for six months or less, but after that time the government must show a significant likelihood of removal in the

reasonably foreseeable future. Unfortunately, due to either the alien's actions or the alien home country's lack of "cooperation," the government, even if acting diligently, often cannot repatriate the alien. This has resulted in the release of thousands of criminal aliens back into the general public, where they often re-offend, in many cases committing even more heinous crimes. Would you support legislation to fix the problems caused by this case?

49. Similarly, in the 2013 case of *Rodriguez v. Robbins*, the U.S. Court of Appeals for the Ninth Circuit held that criminal and arriving aliens held in mandatory detention under 8 U.S.C. §§1226(c) and 1225(b), respectively, must be provided with a bond hearing after six months detention. In other words, the detention of criminal and arriving aliens is only mandatory for six months, after which the government is required to show that the aliens in custody are either a flight risk or a danger to public safety in order to continue detention. This is true regardless of the detainee's adjudication status. Like *Zadvydas*, this case could contribute to the release of dangerous criminal aliens back into communities. Would you support legislation to fix the problems caused by this case?
50. 8 U.S.C. §1228(a) states that the Attorney General "shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities" for certain criminal aliens. Conducting hearings in such a manner reduces the cost of future detention at taxpayer expense. Do you support the expansion of this program, and if so, how will you sure its implementation by EOIR? Will you coordinate with the Department of Homeland Security to ensure that, where applicable, as many removal hearings as possible will be conducted in this manner?
51. The 1940s regulation that created the "Fairness Doctrine" was held unconstitutional in a 1986 Federal Communications Commission decision. The following year, the Department of Justice advised the president to veto legislation that would have codified the doctrine in statute. Do you believe that the Fairness Doctrine is constitutional?
52. Please list which programs within the Justice Department, if any, you believe can be eliminated because they are ineffective, duplicative, unnecessary, or have outlived their purpose.
53. I am told that litigating attorneys within Main Justice are paid significantly more than similarly-situated federal prosecutors within the 93 U.S. Attorney Offices across the country. This pay variance is especially large at the entry level, and can differ as much as \$30,000 between similarly situated Assistant U.S. Attorneys and Justice Department trial attorneys. I am also told that the Department has the authority to correct the problem because it arises out of the uneven treatment in pay of Assistant U.S. Attorneys, covered under the specialized Administratively Determined pay schedule for Assistant U.S. Attorneys, and the pay of all other Department attorneys, covered under the government-wide General Schedule. In your capacity as chair of the Attorney General's Advisory Committee, what have you done to address this problem, and what will you do to correct it, if you are confirmed as Attorney General?

54. On January 16, 2014, Attorney General Holder announced a new policy that prohibits federal agency forfeiture of assets seized by state and local law enforcement agencies. Would you agree that these forfeitures are important tools that enable law enforcement to effectively investigate, disrupt, and dismantle criminal organizations? If confirmed, will you continue Attorney General Holder's policy?
55. Have you ever expressed an opinion on whether the death penalty is unconstitutional? If so, what was that opinion? If not, do you have such an opinion and what is it?
56. When Attorney General Holder announced that the administration would no longer defend the Defense of Marriage Act (DOMA), he claimed that by doing so, it was acting consistent with the Justice Department's "longstanding practice of defending the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense." Do you agree that there are several reasonable arguments in defense of DOMA, including that the law is rationally related to legitimate government interests in procreation and childrearing, or do you agree with the administration that it is not rationally related to those ends?
57. Do you acknowledge that the George W. Bush administration successfully defended DOMA on the basis that the law is rationally related to legitimate government interests in procreation and childrearing?
58. Do you acknowledge that those same arguments had been relied on by federal and state courts in upholding states' traditional marriage laws?
59. Do you agree that the Executive Branch has a clear and unwavering duty to vigorously defend the constitutionality of any law for which a reasonable defense may be made?
60. Do you agree that there is a difference between refusing to defend a law that the administration regards as unconstitutional and refusing to defend a law that the administration opposes on policy grounds?
61. Do you agree that if an administration refuses to defend clearly constitutional laws based on its own policy views, it is violation of the oath to protect and defend the Constitution and the laws of the United States?
62. According to the questionnaire that you submitted to the Committee, in February 2006, you spoke at the Federal Bar Council Winter Bench and Bar Conference on whether international law should be considered by United States courts. You indicated that you did not have lecture notes and that no transcript of the event is available. Please describe the substance of your remarks at that conference.
63. Have you ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law? If so, what was that opinion? If not, do you have such an opinion?

64. Have you ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law in deciding the meaning of the U.S. Constitution? If so, what was that opinion? If not, do you have such an opinion?
65. Do you think that the jurisdiction of the International Criminal Court is based in customary international law, or solely on ratification of the Rome Statute?
66. In April 2009, a Spanish judge began an investigation into alleged torture at the detention facility at Guantanamo Bay. Speaking to reporters in Berlin a few days later, Attorney General Holder was asked whether the Justice Department would cooperate with such an investigation. He said: "Obviously, we would look at any request that would come from a court in any country and see how and whether we should comply with it . . . This is an administration that is determined to conduct itself by the rule of law and to the extent that we receive lawful requests from an appropriately created court, we would obviously respond to it." He later clarified his statement by saying that he was talking only about "evidentiary requests." If confirmed, how would you respond to such investigations and evidentiary requests?

Senator Jeff Sessions
Follow-up Questions for the Record
Loretta E. Lynch, to be Attorney General of the United States

1. In Question 1, you were asked whether you believe that President Obama has exceeded his executive authority in any way and, if so, how. You responded: “As the United States Attorney for the Eastern District of New York, I have not been charged with determining when and whether the President has exceeded his executive authority.” While I understand that you may not have been charged with making such determinations in your capacity as United States Attorney, the question did not ask whether you were charged with such determinations. Should you be confirmed as Attorney General, you will be responsible for such determinations. In order to properly evaluate your nomination, it is important for members to know your views in that regard. Please take this opportunity to consider and respond to the original question.

2. In Question 5, you were asked whether Sadiq al-Abadi, Ali Alvi, and Faruq Khalil Muhammad ‘Isa are unlawful enemy combatants and, as such, could be tried before a military commission and detained for the duration of hostilities under the law of war. You responded:

“I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In any particular case, representatives of the agencies who are tasked with protecting the American people, including the Department of Defense, the Department of Homeland Security, the Department of Justice and agencies in the Intelligence Community, work together to determine the most effective tools to apply in that case, based on the particular facts and applicable law. As the United States Attorney for the Eastern District of New York, my role to date has been limited to determining whether or not there was a prosecutable federal case, not which was the appropriate tool to employ.”

You also said that because the cases referred to in Question 5 are ongoing prosecutions, you “cannot comment on the specific facts or decision-making processes in those matters, other than to indicate that the process described above was observed.” The question did not ask you to disclose details about the decision-making process in the above cases nor did it address your role in the decision to prosecute the individuals in Article III courts. Instead, it asked whether the individuals qualify as unlawful enemy combatants and, as such, could be tried before a military commission and detained for the duration of hostilities. Please take this opportunity to answer that question.

3. In your responses to Question 9, which asked about the distinctions between the civilian and military justice systems with regard to interrogation and the right to remain silent; Question 11, which asked about the distinctions between the civilian and military justice systems with regard to bringing an arrestee before a judge; and Question 12, which asked about the distinctions between the civilian and military justice systems with regard to

charging timelines, you included in your answer the following: “I have not had the occasion as a United States Attorney to examine the requirements under the military commission system, but, if confirmed as Attorney General, I would support using all lawful tools of national power, including the military commission system, to protect the nation from terrorism.” However, in response to Question 5, you stated that you “believe strongly that the United States government must use every available tool,” including military commission trials, to protect the American people. If you believe that military commissions are one of the “tools” available to the government to protect the American people, you must have some familiarity with the military commission system. Accordingly, please take this opportunity to answer the original questions posed by Questions 9, 11, and 12. Please also explain what you mean by the phrase “national power.”

4. In Questions 14 and 15, you were asked whether you believe it should be the policy of the United States to negotiate with terrorists and, if confirmed, whether you will advise the president to keep in place the United States’ longstanding policy of not negotiating with terrorists. In your response to each question, you stated: “It is my understanding that it is the policy of the United States not to grant concessions to terrorists. If confirmed, I would support that policy.” Please explain what you mean by “grant concessions.” Please also explain the difference between “negotiating” with terrorists and “granting concessions” to terrorists.
5. In Question 16, you were asked whether you support a permanent extension of a number of intelligence gathering authorities under the Foreign Intelligence Surveillance Act (FISA), which are set to expire on June 1, 2015. You responded:

“Although I have not had the occasion to consider these particular provisions of the Foreign Intelligence Surveillance Act (FISA) as a United States Attorney, I believe that it is important that our intelligence and law enforcement professionals have the full panoply of tools to deal with evolving national security threats like international terrorism, while ensuring that we use those tools in a way that effectively protects privacy and civil liberties. As I mentioned during the hearing, as a prosecutor, I am quite familiar with the invaluable benefits provided by roving wiretaps in narcotics prosecutions; those wiretaps are critical to conducting electronic surveillance against those attempting to evade it and are only issued after judicial review.

I understand that the Administration supported the USA FREEDOM Act, which would have extended these three provisions of FISA while also providing additional privacy protections, including prohibiting bulk collection under Section 215. If confirmed as Attorney General, I look forward to working with this Committee, as well as the Intelligence committees, on legislation to counter serious national security threats in a manner that also protects the privacy and civil liberties of our citizens.”

While I appreciate your view that it is important for intelligence and law enforcement professionals have the full panoply of tools to deal with evolving national security threats, your response did not address whether you would support a permanent extension of intelligence-gathering authorities under 50 U.S.C. § 1805(c)(2)(B), 50 U.S.C. §§ 1861-2, and 50 U.S.C. § 1801(b)(1)(c). Please take this opportunity to respond to the original question.

6. In Question 18, you were asked to explain your understanding of the scope of the immunity provided to U.S. personnel involved in certain detentions and interrogations of enemy combatants between September 11, 2001 and December 30, 2005. You responded: “I have not had occasion to address that statute in my role as a United States Attorney, but I have reviewed the statute and believe that it describes in plain terms the scope of immunity.” Please take this opportunity to familiarize yourself with the statute and provide an answer to the original question.
7. In Question 23(b), you were asked if you agree that drug trafficking is a serious offense that is deserving of equally serious mandatory minimums in order to deter such behavior. In response, you stated:

“As I noted in my testimony before the Committee, with respect to the enforcement of the narcotics laws that contain mandatory minimums—laws which I have had occasion to use on numerous occasions as a career prosecutor and United States Attorney—those laws are being followed not just by my Office but throughout the United States Attorney community. Every United States Attorney’s Office retains and exercises the discretion to seek a mandatory minimum sentence. We also look at the nature of the crime and narcotics problems in our particular districts to determine whether a mandatory minimum sentence would be appropriate under the particular facts of each case.”

This statement did not answer the question. Please take this opportunity to do so.

8. In Question 32, you were asked if you agree with Attorney General Holder’s statement that a ban on so-called “assault weapons” and large capacity magazines, universal background checks, and new unnecessarily high criminal penalties for firearm offenses are “really reasonable gun safety measures.” You responded:

“As a United States Attorney, one of my highest priorities has been to protect Americans from violent crime, including violent gun crime. I understand that the Administration supports passage of legislation that would strengthen and enhance the now-sunsetted 1994 Public Safety and Recreational Firearms Use Protection Act. If confirmed, I look forward to working with Congress on any appropriate legislation toward that end.

This statement did not answer the question. Please take this opportunity to do so.

9. In Question 35, you were asked whether, if confirmed, you would commit to devote Justice Department resources to put a stop to the practice of state and local jurisdictions' refusal to honor ICE detainees. You responded:

"I support efforts to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. If confirmed as Attorney General, I will continue the Department's efforts to work closely with the Department of Homeland Security and state and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws."

This statement did not answer the question. Please take this opportunity to do so.

10. In Question 36, you were asked whether, if confirmed, you would support withholding State Criminal Alien Assistance Program (SCAAP) grants to jurisdictions that refuse to honor ICE detainees. You responded:

"I understand that while the Prison Rape Elimination Act provides that certain grant funds will be withheld from states that are noncompliant, a similar statutory penalty is not present in the State Criminal Alien Assistance Program (SCAAP). If confirmed as Attorney General, I will work closely with leadership of the Bureau of Justice Assistance, which administers SCAAP, and my colleagues at the Department of Homeland Security to examine ways to improve SCAAP."

While I appreciate your commitment to examining ways to improve SCAAP if confirmed, your response does not answer whether you would support withholding SCAAP grants to jurisdictions that refuse to honor ICE detainees. Please take this opportunity to respond to the original question.

11. In Question 39, you were asked if you will commit to working with Congress to rebuild the 287(g) program, and devote the necessary Justice Department resources to the program. You responded:

"In my position as the United States Attorney for the Eastern District of New York, I have had no role in addressing ICE's implementation of the 287(g) program. I look forward to learning more about the 287(g) program and other ICE programs directed at public safety, if I am confirmed as Attorney General."

While I understand that as United States Attorney you have had no role in addressing ICE's implementation of this program, the question asked simply whether you would commit to work with Congress to rebuild the program and devote the necessary Justice Department resources to the program. Please take this opportunity to respond to the original question.

12. In Question 40, you were asked if you will commit to reinstating Operation Streamline and ensure that the Justice Department has or requests the necessary resources to expand the program across the southwest border. You responded:

“As the United States Attorney for the Eastern District of New York, I have not stood in the shoes of the Southwestern Border United States Attorneys as they have set their priorities. While I have great confidence in those United States Attorneys, if confirmed as Attorney General, I will personally take a close look at the policies governing prosecution of illegal border crossers to ensure that those policies are best protecting the security of the United States and its citizens.”

While I understand that you have not had a role in setting the priorities of the Southwestern Border United States Attorneys, in order to properly evaluate your nomination, it is important for members to know how you would prioritize Department resources if confirmed. Accordingly, please take this opportunity to respond to the original question.

13. Question 42 states that the Office of Legal Counsel (OLC) opinion regarding the president’s executive action does not identify any statutory authority for the provision of Employment Authorization Documents to the majority of the individuals eligible for either the Deferred Action for Childhood Arrivals or the Deferred Action for Parents of Americans and Lawful Permanent Residents programs. The question asked you to identify the legal authority for the provision of Employment Authorization Documents to these individuals. You responded: “It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department’s brief for a full discussion of this issue.” The question did not ask you to comment on matters subject to pending litigation, but rather asked you to cite a legal authority for the basis for OLC’s analysis – an analysis which you repeatedly characterized as “reasonable” during your testimony before this Committee. Please take this opportunity to respond to the original question.
14. In Question 45, you were asked specific questions about the Board of Immigration Appeals’ (BIA) decision in the *Matter of Chairez*, 26 I&N Dec. 349 (2014). You responded:

“As the United States Attorney for the Eastern District of New York, I have not been involved in any matters pending before the Board of Immigration Appeals, and I have not had the opportunity to review the Board’s decision in *Matter of Chairez* [sic]. If confirmed as Attorney General, I look forward to learning more about these important issues.”

While I appreciate your willingness to learn more about these issues if confirmed, this statement does not answer the question. The decision(s) to which I refer are available on the Justice Department’s website: <http://www.justice.gov/eoir/vll/intdec/vol26/3807.pdf>; <http://www.justice.gov/eoir/vll/intdec/vol26/3825.pdf>. Please familiarize yourself with this case and take this opportunity to respond to the original questions.

15. In Questions 46(a) and 46(b), you were asked whether the BIA's "Pro Bono Project" – which is housed within the Justice Department – complies with 8 U.S.C. §1229a and whether, if confirmed, you will direct the BIA to stop using taxpayer resources to find counsel for aliens and eliminate the program. You responded:

"The government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If confirmed as Attorney General, I look forward to learning more about this important issue."

Please take this opportunity to familiarize yourself with this program and provide an answer to the original question.

16. In Questions 47(a) and 47(b), you were asked whether a federally funded AmeriCorps program – "justice AmeriCorps" – that provides attorneys to aliens in immigration proceedings complies with federal law. You were also asked whether, if confirmed, you will cease using taxpayer resources to provide attorneys for aliens in immigration proceedings and eliminate the program. In response, you stated:

"The government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If confirmed as Attorney General, I look forward to learning more about this important issue."

Please take this opportunity to familiarize yourself with this program and provide an answer to the original question.

17. In Question 51, you were asked whether you believe that the Fairness Doctrine is constitutional. You responded:

"I have not had occasion to encounter this issue in my role as a United States Attorney. If Congress is considering legislation that would codify the fairness doctrine, I would welcome, if confirmed as Attorney General, the opportunity for the Department of Justice to evaluate the constitutionality of such legislation."

While it is not surprising that you have not had occasion to encounter this issue in your role as United States Attorney, this statement does not answer the question. Please take this opportunity to do so.

18. In Question 55, you were asked if you have ever expressed an opinion on whether the death penalty is unconstitutional, and whether you have such an opinion. In response, you stated: "As I testified before the Committee, I believe the death penalty is an effective penalty. In bringing such cases, I will be guided, as I was during my time as a federal prosecutor, by the evidence and the law." While I appreciate your view that the death penalty is an effective penalty, the statement did not answer the question. Please take this opportunity to do so.

19. In Question 57, you were asked whether you acknowledge that the George W. Bush administration successfully defended the Defense of Marriage Act (DOMA) on the basis that the law is rationally related to legitimate government interests in procreation and childrearing. You responded:

“The Supreme Court has addressed the constitutionality of Section 3 of the Defense of Marriage Act (DOMA), and held that it is unconstitutional under the Equal Protection component of the Due Process Clause. Accordingly, arguments in defense of the statute were rejected. I have not reviewed the filings the Department made before the Attorney General’s letter to Speaker Boehner in February 2011. In any event, the Supreme Court has now resolved the constitutionality of Section 3 of DOMA.”

This statement does not answer the question. Please take this opportunity to do so.

20. In Question 64, you were asked if you have ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law in deciding the meaning of the United States Constitution and whether you have such an opinion. You responded: “Although I have not had occasion to address this question in my role as United States Attorney, if confirmed as Attorney General, I will be guided by applicable Supreme Court precedent.” While I appreciate your commitment to follow precedent, this statement does not respond to the question. Please take this opportunity to do so.
21. In Question 65, you were asked whether you think that the jurisdiction of the International Criminal Court is based in customary international law, or solely on ratification of the Rome Statute. You responded: “I have not had occasion to encounter questions concerning the jurisdiction of the International Criminal Court in my role as a United States Attorney, and as a result, I do not have developed views on this issue at this time.” While I understand you have not had occasion to encounter such questions in your role as United States Attorney, this statement does not answer the question. Please take this opportunity to do so.

Questions for Attorney General Nominee Loretta Lynch**From the Office of U.S. Senator Thom Tillis of North Carolina**

1. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of seven days of so-called "early voting" by reducing the early voting window from 17 to 10 days. The Department of Justice claimed the 7 day reduction was a violation of the law. However, numerous states do not offer any form of early voting. Therefore, if you are confirmed to serve as the next United States Attorney General, will you instruct the Voting Rights Section of the Department to pursue litigation against states that do not offer early voting at all on the same basis as the Department has brought suit against NC for merely reducing the number of early voting days from 17 to 10? If not, would you please explain the rationale for why you would not have the Department pursue such states?
2. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of "same day registration." However, numerous states have never offered "same day registration." Therefore, if you are confirmed to serve as the next United States Attorney General, will you instruct the Voting Rights Section of the Department to pursue litigation against states that never offered "same day registration" on the same basis as the Department has brought suit against NC for eliminating "same day registration?" If not, would you please explain the rationale for why you would not have the Department pursue such states?
3. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of the counting of votes cast on election day outside the precinct where a voter is registered. Given that numerous states do not count votes cast out of precinct on election day, will you, if you are confirmed to serve as the next United States Attorney General, instruct the Voting Rights

Section of the Department to pursue litigation against those states? If not, please explain why not.

4. During the January 28, 2015 hearing, you testified that “the right and obligation to work is shared by everyone in this country, regardless of how they came here.” Do you believe the citizens of any foreign country in the world has the right to work in the United States if they can only reach America’s shores? Do you believe individuals who have entered the country illegally also have the right to vote in local, state, or national elections? Please explain your answer.

5. In July of 2014, during a preliminary injunction hearing in the case of *Holder v. North Carolina*, 997 F. Supp. 2d 322 (M.D.N.C. 2014), an expert testifying on behalf of the United States Department of Justice opined:

Also, understanding within political science, that people who register to vote the closer and closer one gets to Election Day tend to be less sophisticated voters, tend to be less educated voters, tend to be voters who are less attuned to public affairs. . . . People who correspond to those factors tend to be African Americans, and, therefore, that’s another vehicle through which African Americans would be disproportionately affected by this law.

Are you willing to condemn the reasoning of this expert witness insofar as his testimony effectively asserted that African American voters tend to be “less sophisticated” than non-minority voters? If not, please explain why not. Would you agree that the Department of Justice should not use taxpayer dollars to retain such experts who hold such opinions?

6. Without regard to the context of the statement referenced in Question 5, above, do you agree that any assertion that minority voters are somehow “less sophisticated” than non-minority voters should be rejected as repugnant and offensive? If not, please explain why not.

7. Do you believe an attorney disciplined by a state bar, or one found to have committed prosecutorial misconduct, should be allowed to serve as an attorney at the United States Department of Justice?

8. In January of 2014, you presented remarks at the Martin Luther King, Jr. Center in Long Beach, New York. During the course of those remarks, you stated the following:

There is still more work to do. People tell us the dream is not realized because dreams never are. Mandela and King knew that we had to continue working. I’d be remiss if I didn’t tell you that under this

President and under this Attorney General the Department of Justice is committed to following through with those dreams. 50 years after the march on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for. We stand in this country, people try and take over the state house and reverse the goals that have been made in voting in this country. But I am proud to tell you that the Department of Justice has looked at these laws and looked at what's happening in the Deep South and in my home state of North Carolina has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits will continue. [Emphasis added.]

With regard to the comment that "people try and take over the state house," please state to whom the term "people" refers, what "state house" was taken over, and what "goals that have been made in voting" are that have been reversed.

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
February 13, 2015

FOLLOW UP QUESTIONS FROM SENATOR TILLIS

1. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked a number of questions that related to transparency at the Department of Justice. As you know, the Inspector General serves as an independent checking power to deter fraud and promote efficiency within the Department of Justice and other agencies. Under the Inspector General Act, the Inspector General has the authority, "to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." 5 U.S.C. App. § 6 (a)(1). This information includes Title III wiretap information, grand jury documents, and consumer credit information under the Fair Credit Reporting Act. In some situations, the Attorney General may prohibit investigations, audits, or issuance of subpoenas if the Attorney General provides written notice to the Inspector General explaining the reason such action complies with 5 U.S.C. App. § 8E (1), (2), and (3).

According to testimony from Inspector General Michael Horowitz in 2013, the Department of Justice obstructed his authority to access non-privileged documents. Instead, the practice of Attorney General Holder required the Inspector General to receive written permission before the Inspector General obtained access to non-privileged records. In my view, this practice violates the plain reading of the statute and requires the Inspector General to give deference to its auditing agency, which clearly defeats the statutory purpose and independence vested in the Inspector General.

If confirmed as Attorney General, would you continue the same practices as your predecessor?

- a. If yes, specifically explain your statutory interpretation that gives the Attorney General the ability to violate the plain meaning of the statute.
 - i. Furthermore, specifically explain where you find statutory authority to require the Inspector General to comply with the current administration's practice of requiring written permission to access non-privileged documents?
 - ii. Specifically explain what power the Inspector General holds to effectively audit, recommend efficiency proposals, and eliminate waste if the Attorney General can unilaterally withhold access information that is not privileged?
 - iii. If the Attorney General can unilaterally withhold information from the Inspector General without statutory justification, what prevents other federal agencies from obstructing investigations and interfering with the independent powers given to the Inspector General?

- b. If no, please specifically explain what steps you will take ensure the independence of the Inspector General's ability to audit the Department of Justice?
2. In written questions submitted by this office previously, you responded that some of those questions related to pending litigation and that you therefore could not respond. Please explain why you were able to comment on pending litigation before a January 2014 audience in Long Beach, New York, but you are unable to do so when testifying before Congress.
3. In a December 2014 Report entitled "Professional Misconduct: DOJ Could Strengthen Procedures For Disciplining Its Attorneys," the Government Accountability Office concluded: "The Department of Justice (DOJ) has made changes to improve its processes for managing complaints of attorney professional misconduct since 2011 but has not implemented plans to improve processes for demonstrating that discipline is implemented, or achieving timely and consistent discipline decisions."

In light of the GAO's conclusion, one of my previous questions to you was whether an attorney disciplined by a state bar, or one found to have committed prosecutorial misconduct, should be allowed to serve as an attorney at the United States Department of Justice. Your response indicated that you would be committed to pursuing appropriate discipline for individuals who do not carry out their duties with integrity and professionalism. Surely we can agree that attorneys who have committed prosecutorial misconduct or who have been disciplined by a state bar have not always carried out their duties with integrity and professionalism. Do you, in fact, agree with that statement? Secondly, would you, consistent with any due process rights of such an employee, dismiss an employee who does not uphold the "highest standards" about which you spoke in your previous response?

4. In December of 2012, you represented the Department of Justice in civil settlements with HSBC in your capacity as U.S. Attorney. You stated that the bank "routinely did business with entities on the U.S. sanctions list," and the bank helped dangerous drug cartels move large amounts of money. In addition to your own statements, there are reports that American citizens' personal information, such as names and social security numbers, were used to perpetuate fraud or were otherwise exposed.
 - a. Did you have knowledge that HSBC was using or had used American citizens' personal information to perpetuate fraud when you settled the United States' suit against HSBC?
 - b. Without revealing privileged information regarding the settlement reached in the HSBC matter, please describe what metric, standards, or guiding principles you would use to determine an appropriate settlement amount for similar cases going forward?
 - c. Please explain the Department's rationale for not pursuing criminal prosecution in the HSBC matter.

- d. If confirmed, will you commit to imposing harsher penalties against entities that willfully ignore interests of national security and use American citizens' personal information to perpetuate fraud?

U.S. Senator David Vitter

Questions for the Record Regarding the Nomination of:

Loretta Lynch, to be United States Attorney General

February 5, 2015

1. On what statutory authority does the President, the Attorney General, or the Secretary of Homeland Security have the power to grant work authorization to illegal aliens?
2. What is the purpose of the Immigration and Nationality Act?
3. Why do you think Congress set numerical limitations on the number of visas for foreign nationals and guest workers?
4. Does hiring unauthorized workers lower wages for U.S. workers?
5. All other things being equal, doesn't increasing the labor supply depress wages for workers?
6. Where does the executive branch derive its authority to create a "deferred action" program for an entire class of illegal aliens?
7. Where in the law does it grant the President, Attorney General, or Secretary of Homeland Security the authority to parole into the United States an entire class of illegal aliens?
8. How do you justify the administration's use of parole authority in the November 2014 executive action for a class of millions of illegal aliens with a clear statutory grant of authority to only grant parole on a "case-by-case basis"?
9. In 2013, a Ninth Circuit Court of Appeals Judge wrote in a published opinion that "There is an epidemic of Brady violations abroad in the land." Judge Kozinski was of course referring to the principal identified in Brady v. Maryland, 373 U.S. 83, a 1963 case in which the Supreme Court held that government prosecutors are required to turn over all exculpatory evidence to the Defendants.
 - a. Do you agree with the holding of Brady v. Maryland?
 - b. Does the Circuit Court of Appeals' finding that there is an epidemic of Brady violations trouble you?
 - c. Do you agree there is an epidemic of Brady violations?

- d. What steps will you take to address this epidemic of Brady violations by Department of Justice prosecutors?
10. Brady is founded on the constitutional right to due process, and courts have long held that defendants sued by the government in civil proceedings are entitled to due process.
- Do you agree that the Department of Justice's obligations to safeguard the constitutional rights of defendants under Brady should apply equally in civil matters prosecuted by the Department of Justice? If not, why not?
 - As Attorney General, would you be willing to issue directives to Department of Justice prosecutors of civil matters to produce materials to the defense in accordance with Brady v. Maryland?
11. In a January 9, 2015 article written by George F. Will, a Pulitzer Prize winning Commentator for the Washington Post, entitled "Questions for Attorney General Nominee Loretta Lynch," Mr. Will provided a number of questions you should answer during the confirmation process. Please answer these specific questions from Mr. Will:
- Many progressives say that the 34 states that have passed laws requiring voters to have a government-issued photo ID are practicing "vote suppression." Does requiring a photo ID at airports constitute "travel suppression"?
 - Visitors to the Justice Department are required to present photo IDs. Do you plan to end this "visit suppression"?
12. Hans von Spakovsky, senior legal fellow at the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies, former member of the Federal Election Commission, and former Counsel to the Assistant Attorney General for Civil Rights at the U.S. Department of Justice, and J. Christian Adams, former counsel for the Voting Rights Section at the U.S. Department of Justice and blogger for PJ Media, wrote a January 27, 2015 article in the National Review entitled "The Questions Loretta Lynch Needs to Answer". Please answer the following questions from their article:
- Do you "believe, as Eric Holder does, that voter-ID laws are racist?"
 - Do you "disagree with the Supreme Court's decision upholding such laws in 2008 in *Crawford v. Marion County*?"
 - Do you share Attorney General Holder's apparent view that federal anti-discrimination laws such as the Voting Rights Act do not need to be executed in a race-neutral manner?
13. In your legal opinion, is there an allowable method for states to require photographic identification in order to vote?

14. Do you oppose state laws requiring a potential voter to present valid, government-issued photographic identification in a vacuum?
15. Does in-person voter fraud exist?
16. Is voting essential to a democracy?
17. Should legal permanent residents have the right to vote in federal elections?
18. Should felons who have served their sentences have the right to vote in federal elections?
19. Should undocumented persons in the country without felony convictions have the right to vote in federal elections?
20. As Attorney General, will you commit to equal investigation and enforcement of Section 7 and Section 8 of the National Voter Registration Act (NVRA)?
21. In 2013, the Department of Justice filed a lawsuit against Louisiana's school voucher program, known as the Louisiana Scholarship Program, alleging that the program violated federal desegregation orders resulting from the 1975 case *Brumfield v. Dodd*. The Department argued that allowing voucher students to transfer out of their public schools would disrupt the racial balance in public school systems that the desegregation orders are meant to protect. However, subsequent research commissioned by Louisiana found that in the majority of districts the movement of students improved or did not affect racial balance. In districts where the program had a negative impact, the effect was "miniscule". Nevertheless, the Eastern District of Louisiana ruled that Louisiana must provide detailed information to the Department of Justice on each student applicant at least 10 days before the vouchers are awarded. Please answer the following questions detailing how this information will be used if you are confirmed:
 - a. Will the Department of Justice use this information to prevent students from participating in the voucher program, even in cases where the program would have little to no effect on racial imbalance in the public school, simply to promote the anti-school choice views of President Obama and the Department of Education?
 - b. Will you promise that the Department will not block students from participating in the Louisiana Scholarship Program, which is meant to give underprivileged students, many of whom are African-American, access to quality schools in accordance with federal law and judicial precedents?
22. The Treasury Department and the federal banking regulators reported that many banks are engaging in a process called "de-risking," which can be defined as banks ending services to existing businesses that might prevent a risk of scrutiny and regulations. Usually these businesses are completely legal and engaged in legitimate business such as short-term lending, check cashing, tobacco sales or legal sales of firearms.

- a. What is your view on this practice?
 - b. Should banks be terminating relationships with these types of legal businesses?
23. What is the appropriate role of the Department of Justice in deciding which legal businesses should have access to financial institutions and which should not and how will you make that judgment if you are confirmed?
24. In a Senate Judiciary Committee hearing Attorney General Holder was quoted as saying, "I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if we do prosecute — if we do bring a criminal charge — it will have a negative impact on the national economy, perhaps even the world economy." Do you agree with Attorney General Holder that some companies be exempted from criminal prosecution due to their impact on the nation's financial system or economy?
25. In advance of your hearing you failed to include on your questionnaire an interview in which you defended a settlement you reached with a megabank. This bank was accused of allowing dangerous Mexican drug cartels to launder money through their bank. In a deal you orchestrated the bank paid a fine instead of being prosecuted. Why did you omit this interview from your questionnaire? How will you handle oversight of this settlement given the role you played creating it?
26. The Health Insurance Portability and Accountability Act (HIPAA) exists primarily to protect patients' right to privacy and requires abortion clinics to acquire a signed disclosure before releasing any information about the patient to anyone else, especially the public. There are several cases in which abortion clinics have clearly broken this law. In light of these serious violations of HIPAA, aggressive action must be taken against the clinics, and they must be held accountable for their illegal practices. It is all too common that clinics are not penalized for these types of violations. I understand that the number of HIPAA violation complaints received by the Department of Health and Human Services has increased since 2013, according to an article from InformationWeek published last July 8, 2014 titled "HIPAA Complaints Vex Health Care Organizations."
- The article states: "Jerome Meites, an HHS chief regional civil rights counsel, warned late last year that the government would pursue organizations more aggressively for HIPAA violations. Audits, which began in 2013, will continue through 2015, he said. In addition, states enacted their own data security and enforcement policies. Of the approximately 90,000 complaints received through 2013, only 32,000 fell under the jurisdiction of the HHS Office of Civil Rights. Of these, 22,026 required corrective action, while investigation of 9,899 found no violation. Of the 521 complaints the OCR referred to the Department of Justice for potential criminal justice, the DOJ has agreed to pursue only 54 of them."
- a. If you become the Attorney General, what role will the DOJ play in prosecuting these violations?

- b. Will you prosecute more of these cases than the DOJ has in previous years?
- c. Will you make protecting patients privacy through pursuing HIPAA violators a priority of yours, should you be confirmed as Attorney General?

27. As you know, U.S. Magistrate Judge Gary Brown, who oversees the FEMA Sandy claims case of Deborah Raimey and Larry Raisfeld v. Wright National Flood Insurance Co. (14-mc-41 and Case 2:14-cv-00461-JFB-SIL), recently issued a Memorandum and Order dated November 7, 2014 (14-CV-461, Docket Entry No. 82 & 14-MC-41, Docket Entry No. 637) exposing insurance fraud by a fraudulent engineering company hired to deny a Sandy victim's claim. Judge Brown found evidence that the fraud may be "widespread" and the conduct "outrageous," and also found indications that the fraud may be "widespread" practices. He found the fraud so bad that he sanctioned the defense attorneys for not disclosing the evidence. (*See attached Order – Doc #35*) The Judge ordered the WYOs in the litigation to turn over engineering reports in approximately 1,000 cases. The U.S. Senators from New York and New Jersey have demanded the same fraud investigation ordered by this Federal Judge. One would think that with a NY Federal Judge's ruling exposing widespread insurance fraud and both NY Senators calling for a document disclosure, the New York U.S. Attorney would weigh in. In a shocking move, as the New York U.S. Attorney, you filed a brief to try to block the document disclosure. In this brief, you argue that the documents which may reveal the fraud are "unnecessary" and "unduly burdensome," and asked the court to amend the ruling to end the inquiry with the one case of discovered fraud. (*See attached FEMA Motion to Set Aside Doc #36*). The move is nothing short of a cover-up. This is even more striking given the fact that we learned FEMA received incontrovertible evidence of this fraud in another case over a year ago and intentionally ignored it. (*See attached letter from Mostyn to Judge Brown dated 12/1/14*). I find it very odd that the U.S. Attorney in New York would file a motion to limit discovery of widespread insurance fraud perpetrated against Long Island residents in Sandy.

- a. Upon learning of the fraud discovered by a Federal Judge, why would your office seek to limit the investigation into this potential Federal criminal activity?
- b. Do members of your staff know about this fraudulent activity?
- c. Do you have plans to pursue these cases of fraud now that you know about them? If no, then what is preventing you from going after possible corruption and fraud from the insurance companies that are taking advantage of the victims of this horrible natural disaster?
- d. Do any of your colleagues, employees, or attorneys at the U.S. Attorney's office for the Eastern District of New York have pre-existing relationships with officials and attorneys for the WYO insurance companies that have been accused of committing fraud? Please submit their names, positions, and who it is they know representing the WYO companies.

28. According to the Treasury Inspector General for Tax Administration (TIGTA), the Internal Revenue Service (IRS) used “inappropriate criteria to identify tax-exempt applications for review,” as early as March of 2010.^[1] Subsequently, the Department of Justice, numerous Congressional Committees, and TIGTA have all initiated additional investigations into IRS improprieties, which the IRS has used to justify not disclosing information related to public FOIA requests^[2] and which have brought to light attempts by the IRS to avoid public scrutiny of their actions.^[3]
- a. Considering that the IRS was targeting organizations on a content-specific basis with regards to their potential political speech, do you think it’s important for any subsequent investigation to be conducted in a neutral and objective manner?
 - b. In response to a question from Senator Cruz on appointing a special prosecutor to investigate the IRS targeting allegations, you responded “(m)y understanding is that the matter has been considered and the matter has been resolved.”^[4] Considerations of the moment aside, do you believe the potential political motivations of civil service officials and employees in carrying out their duties are sufficient justification to appoint a special prosecutor? If not, why?
 - c. Do you believe the investigation of the IRS targeting of nonprofits would be better conducted by a single party, organization, or office, like a special prosecutor?
29. November 5, 2014, during a White House press briefing, President Obama, indicated his intention to enter into discussions with congressional leaders to develop a new Authorization of Use of Military Force (AUMF) to specifically target the Islamic State, in order to “right-size and update whatever authorization Congress provides to suit the current fight, rather than previous fights” authorized by the 2001 and 2002 AUMFs. During his 2015 State of the Union, Obama also called on Congress to pass a resolution to authorize using military force against the extremist group Islamic State of Iraq and Syria (ISIS).
- a. Do you support further engagement by the U.S. Congress to address an updated Authorization of Use of Military Force (AUMF)?

^[1] “*Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*”, 5/14/13, <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>, pg. 30

^[2] Defendant’s Opposition to Plaintiff’s Motion Seeking Discovery, *Judicial Watch, Inc. v Internal Revenue Service*, Case No. 1:13-cv-1559-EGS-JMF, 10/17/14, <http://www.judicialwatch.org/wp-content/uploads/2014/11/JW-v-IRS-01559-def-oppo.pdf>, pg. 4

^[3] *Lois Lerner cautioned against email chatter amid lawmaker probes*, 7/9/14, <http://www.politico.com/story/2014/07/lois-lerner-irs-lawyer-email-108722.html>

^[4] *Ted Cruz Leads the New Conservative Crusade Against the IRS*, 1/28/15, <http://www.bloomberg.com/politics/articles/2015-01-29/ted-cruz-leads-the-new-conservative-crusade-against-the-irs>

30. The United States Congress is reviewing consideration of providing President Barack Obama with an updated Authorization for Use of Military Force (AUMF) against the Islamic State and related terrorists. In 2010, court rulings such as *Al-Aulaqi v. Obama* concluded that the questions raised fell under the political question doctrine, and found in particular that [j]udicial resolution of the 'particular questions' posed would require the court take into account complex, military, strategic, and diplomatic considerations – e.g. to “assess the merits of the President’s (alleged) decision to launch an attack on a foreign target” – that it was simply not competent to handle. Handling these questions is something that Congress is equipped, under Article I, Section 8, Clause 1-15, Section 9, and Section 10 of the Constitution to do.
- a. Given the surrounding legal questions, do you agree that in an effort to better "right-size" and update whatever authorization (AUMF) Congress provides to the President, that the Senate Judiciary Committee should have a direct role to examine its tie-ins, in coordination with other relevant Committees, in crafting any new proposal to update the AUMF against the Islamic State, and its potential impacts on U.S. citizens as it is considered?
31. My office has received information that a division within the DOJ working with the Institute of Electrical and Electronics Engineers Standards Association (IEEE-SA), is in the process of drafting a Business Review Letter (BRL), in support of a policy which will change how wireless (Wi-Fi) technology operates, and how Wi-Fi research is conducted and could potentially impact the competitiveness of American innovators. In 2006 a PAE suit almost caused the shutdown of BlackBerry wireless service. Since then, according to the White House Patent Assertion and U.S. Innovation Executive document, published in 2013, technology companies have spent billions in large part to prevent patent suits from competitors. I have also seen various reports that efforts by intellectual property legal experts to discuss the negative impacts of this policy change with the DOJ have been refused. While I support the DOJ's review of whether current policy is consistent with U.S. antitrust laws, it is imperative that any action taken by the DOJ does not unintentionally undermine the rights and competitiveness of U.S. inventors.
- a. Can you provide an update to my office regarding the DOJ's position and plan to move forward with a BLR that appears to be contrary to U.S. law, and on what appears to be a *de facto* change of U.S. policy without prior backing from the Executive or Congress, and based purely on the DOJ Antitrust Division staff opinion?
 - b. Has the DOJ in its BLR reviewed the fact that the Board of Directors of IEEE-USA, the US-based branch of the organization, voted on November 21 expressing its concerns about the proposed policy changes?
32. The Computer Crime and Intellectual Property Section, or CCIPS, implements DOJ's strategies for enforcing the theft of intellectual property (IP). Established in 1991 with only five prosecutors, CCIPS plays a crucial role in protecting our nation's IP. More than 20 years later, it is safe to say computer and intellectual property theft has become more

sophisticated, consisting of international networks targeting U.S. innovations and content. The Computer Hacking/Intellectual Property (CHIP) Unit is another tool in the Department's chest to prosecute cybercrimes and assist in investigations.

- a. If confirmed, will you commit to this Committee that you will ensure CCIPS and the CHIP Units are operating at full strength with the necessary resources to carry out its missions?
33. During your confirmation hearing, you stated that you do not support the legalization of marijuana. As you may know, DC is continuing to proceed with implementation of the initiative even though language preventing DC from moving forward with legalization efforts was included in the bill.
- a. What is your position on DC's Initiative 71 given the passage of HR 83, the Consolidated and Further Continuing Appropriations Act, which was signed into law by the President on December 16, 2014?
 - b. As the chief law enforcement official of the Executive Branch, will you enforce federal law including the Controlled Substance Act and the Anti-Deficiency Act in DC given marijuana is a Schedule 1 controlled substance and not subject to the Cole Memo since DC is not a state? If not, why not?
34. A *U.S. News & World Report* article dated August 27, 2014 titled "School Prayer Fight Begins Anew: Tennessee and North Carolina implement religious expression laws in public schools," highlights the increasing number of attacks on the presence of prayer in public schools by special interest advocacy groups like Americans United for Separation of Church and State. Several states, including Louisiana and North Carolina, have passed laws to clarify students' rights to engage in prayer and religious activity in school. Furthermore, many states have laws that allow the school day to start with a moment of silence for students to quietly pray to themselves, and even these laws are facing aggressive action from anti-prayer groups.
- a. In your opinion, should American public schools begin every day with a prayer?
 - b. Should public schools permit the allowance of a moment of silence at the beginning of the day so that students can pray quietly to themselves?
 - c. If you are confirmed as U.S. Attorney General, would you assist secular advocacy groups in attacking states' laws that clarify students' rights to engage in prayer and religious activity in school?
 - d. What will you do to protect states' laws from secular attacks on students' rights to prayer in school?

**Follow-up Questions for the Record to U.S. Attorney General Nominee Loretta Lynch
Lynch's Deferred Prosecution Agreement with HSBC for Tax Evasion and Money
Laundering**

**United States Senator David Vitter
Friday, February 13, 2015**

In your response to the Senate Judiciary Committee's "Questions for the Record," you explicitly noted that you were answering questions regarding the HSBC Deferred Prosecution Agreement (DPA) which you negotiated in lieu of criminal prosecution "in the context of recent media reports regarding the release of HSBC files pertaining to its tax clients." The media reports may be recent, but the knowledge of HSBC shielding clients from their tax liabilities was known to the U.S. Department of Justice at least as early as April 2010. Reports of these serious violations of U.S. law are nearly five years old, yet no criminal charges have ever been brought against HSBC for the alleged tax evasion scheme under your leadership of the Eastern District of New York.

- 1) When did the U.S. Department of Justice receive the leaked information from French authorities detailing HSBC's scheme to shield its clients from their tax liabilities?
- 2) When did you personally become aware of the HSBC leaked information detailing the tax evasion scheme?

If the media reports are correct, the U.S. Department of Justice received this information as early as 2010, yet in 2012 you negotiated a Deferred Prosecution Agreement with HSBC to avoid criminal prosecution only for the crimes of money laundering and facilitating transactions with countries sanctioned by the U.S. It has been reported that you had full prior knowledge of HSBC's alleged earlier fraud and tax evasion violations.

- 3) Why did you choose not to immediately prosecute?
- 4) Given that HSBC admitted in the DPA to money laundering and conducting business with five countries sanctioned by the US, and given the strong evidence it also committed tax evasion, fraud and possibly other crimes, do you believe that HSBC's "penalty" truly fits the severity of its conduct against the US?
- 5) As has been noted, the HSBC DPA that your office negotiated while you were U.S. Attorney for the Eastern District of New York does not preclude future prosecutions for HSBC's other criminal violations for tax evasion, fraud or for failure to meet its duties and responsibilities under the DPA, but why, nearly 5 years after the Department of Justice became aware of the tax evasion scheme, have no criminal charges been brought?

The details of HSBC Money Laundering Deferred Prosecution Agreement has hardly been made public.

- 6) Exactly how much did HSBC profit from the transactions, loans, accounts, etc... associated with the money-laundering accusations included in the DPA?
- 7) Who in your office or at the Department of Justice determined the penalty paid by HSBC and how did they come to that amount?
- 8) What process(es) were used to ensure that the penalty matches the crime?
- 9) If the alleged identity theft took place, during the course of HSBC's participation in a money laundering scheme, have all affected persons been notified?

Nomination of Loretta E. Lynch, of New York, to be Attorney General of the United States**Written Question for the Record for Loretta E. Lynch, Nominee to be
Attorney General of the United States
Submitted by Senator Sheldon Whitehouse**

As you know, the Senate Select Committee on Intelligence conducted an extensive investigation into the CIA's so-called "enhanced interrogation program." The resulting report – which includes a 499-page executive summary and a full history of the program that is more than 6,000 pages – documents in exhaustive detail how our nation came to employ techniques such as waterboarding, which you rightly characterized at your hearing as torture, and how certain officials lied to Congress and others about the use and effectiveness of these techniques. The report also discusses the role played by the Justice Department in this sorry episode, and in particular details how lawyers in the Office of Legal Counsel enabled the use of techniques that are indisputably torture. As a result, it is essential reading for anyone in a position of leadership at the Department. Will you commit that, if confirmed or prior to your confirmation, you will read the executive summary as well as those portions of the full report discussing the role of Justice Department attorneys?

Senator Grassley, Chairman
Questions for the Record
Sharyl Attkisson

On day two of the hearing for the United States Attorney General nominee, on January 29, 2015, Senator Whitehouse placed into the record a redacted copy of an Inspector General report of its investigation into your allegations of remote intrusion of your computers.¹ Some in the media have cited this report as disputing many of your allegations, if not disproving them outright.²

According to CBS News, however, its forensic analysis found that your work computers were accessed by an unauthorized, external, and unknown party on multiple occasions in late 2012.

1. In your April 2013 complaint to the Office of the Inspector General (OIG) and in other communications with OIG, how many of your computers did you report as intruded and which ones?

Answer:

Although the focus of original forensic analyses was the CBS computer, I reported to OIG intrusions of both my CBS work laptop and my Apple home personal desktop computer.

2. Did the Office of the Inspector General (OIG) examine all of those computers?

Answer:

No.

3. Specifically, did OIG examine any of your work computers owned by CBS?

Answer:

No. The computer that was the subject of the original forensic analyses was not inspected by OIG.

4. Did OIG examine any reports of the CBS News' forensic analysis that found evidence of intrusion?

Answer:

No.

5. Regarding the OIG's alleged "stuck backspace key" finding:

¹ U.S. Senate Committee on the Judiciary, *Attorney General Nomination*, January 29, 2015, <http://www.judiciary.senate.gov/meetings/attorney-general-nomination-part2>.

² Julian Hatter, "Watchdog: Attkisson wasn't hacked, had 'delete' key stuck," *The Hill*, January 29, 2015, <http://thehill.com/policy/technology/231225-doj-watchdog-ex-cbs-reporter-wasnt-hacked-had-delete-key-stuck>; Erik Wemple, "Justice Department's IG report disputes Attkisson's computer-intrusion allegations," *The Washington Post*, January 29, 2015, <http://www.washingtonpost.com/blogs/erik-wemple/wp/2015/01/29/justice-departments-ig-report-disputes-attkissons-computer-intrusion-allegations/>.

- a. Did the OIG examine your personal computer to see if it could recreate the problem or detect a stuck backspace key?

Answer:

No. (The referenced computer was neither the CBS laptop nor the Apple home personal desk top, but a third computer. I had stopped using the CBS laptop the day the first forensics examination concluded there had been remote intrusions on it.)

- b. Did the OIG question you as to whether you experienced this problem in the past or afterward?

Answer:

I don't remember anyone suggesting it was a "stuck backspace key" because the "hyper" speed of the deletions shown at the beginning of the video—erasing pages in a matter of seconds—is not duplicable with a stuck key. If they had asked, or did ask, whether I had ever experienced a stuck key in the past or afterwards, I would have told them no, I did not. I informed them, however, that the abnormal computer behavior resolved only when I disconnected the computer from Wifi.

- c. Did the OIG provide you with evidence that a "stuck backspace key" can erase pages of material in a matter of few seconds, as you allege to have happened with your computer?

Answer:

No. The first I knew that OIG concluded it may be a "stuck backspace key" was when I read it in the summary provided the evening before my testimony before the Senate Judiciary Committee.

- d. Regarding the OIG's alleged "common cable" finding:

- i. Did OIG physically inspect the cable itself?

Answer:

No, at least not while OIG was at my house.

- ii. Did you ever communicate your concerns about the cable to your internet service provider? If so, what was the provider's response?

Answer:

Yes. At the time the cable was first located, I informed Verizon and requested assistance. Verizon immediately informed me that Verizon did not install the device, it did not belong to them, it did not belong on the box, and that I should contact law enforcement officials. Verizon subsequently sent a

technician to the house who also said the cable did not belong there, said he didn't know why it was there or who put it there, and removed it.

- iii. Did you communicate to OIG the provider's comments to you concerning the cable? If so, what was the OIG's response?

Answer:

Yes. They looked at photos of the cable and said that the circumstances and cable were strange, including the fact that the cable disappeared after the Verizon technician removed it.

- e. Did OIG rule out or dispute any of your allegations? If so, which ones, and what is your response?

Answer:

Although I am not a computer technician or expert, my reading of the OIG summary is that OIG did not rule out intrusions on any of the computers.

Significantly, the OIG did not examine the CBS computer. It is my understanding that CBS rejected the OIG's informal request to take possession of the computer, which is the computer that CBS News and my own forensics consultant had previously examined and verified was subject to remote intrusions traced to a USPS IP address.

Regarding the Apple personal desktop, which I asked the OIG to examine for comparison purposes, the OIG confirmed a great deal of unauthorized, suspicious behavior conducted by a skilled party who used the computer in advanced mode. Though investigators discussed the behavior at length with me to separate potentially friendly activities from potentially nefarious activities by a third party, the nature of these discussions is not reflected in the OIG report. In some cases, the unauthorized behavior is noted in the OIG summary, but not explained - yet the OIG oddly did not consider it to be possible evidence of unauthorized access.

As for the unexplained cable, I made no specific allegation as to the role of the unexplained cable, so there was nothing to dispute. In its summary, the OIG could not explain the presence of the cable and offered no theory as to why it was there, yet did not seem to view its unexplained presence and disappearance as curious despite Verizon's clear position. The OIG stated that unnamed Verizon technicians told them the cable might have been used to bring service to an apartment (but there is no apartment) or might have been an air connection later replaced by a buried line (but there never was an air connection). The OIG did not ask me, nor did it apparently ask Verizon, whether our family had ever requested a second line or had previously an air connection that was replaced by a buried line—or they would have known that was not the case.

I made no specific allegation as to the video showing hyper-speed deletions, so the OIG did not dispute it. In its summary, the OIG theorized the video showed a "stuck backspace key," though it did not question me on this theory and did not ask to examine the key on the computer. There is no indication in the summary as to how the OIG concluded that a stuck backspace key could result in the hyper speed deletions as I had described and as shown in the beginning of the video.

f. Do you have any other comments regarding the OIG report and/or the way it is being covered by some members of the press?

Answer:

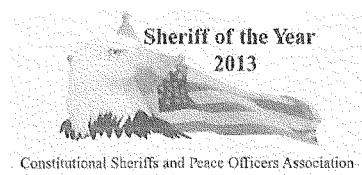
Informally, we posed questions about the scope of the investigation to the OIG, but they have not been addressed, including why the scope of the investigation changed, when it changed, and why it changed; questions about OIG interviews and email reviews that was supposed to be within the scope of the investigation, yet never mentioned as having been carried out; and questions about the names of individuals who were involved.

Formally, I still have not been provided a lawful response to my Freedom of Information request to the OIG regarding the case. I was only belatedly provided the summary, with unexplained redactions, the night before my testimony. Still outstanding are many documents, the forensics report(s), exhibits, emails, notes and more. The OIG summary does not reflect the tone and content of the conversations I had with the investigators. The summary mentions significant unauthorized activity on the Apple personal desktop computer, but for some reason concludes it is not potential evidence of unauthorized activity. The summary does not explain this contradiction. It is obviously false to say that the OIG "disputed" or "knocked down" all—or even any—of my allegations about computer intrusions, which remain substantiated by separate forensics analyses, including ones conducted by CBS News. It would be impossible for the OIG to have ruled out unauthorized intrusions, since it did not examine the primary computer involved: the CBS computer, which was the subject of the original forensics analysis. On the Apple personal desktop, the OIG summary states it was unable to substantiate intrusions on that computer, but neither was it able to rule out intrusions of that same computer, despite many false media reports to the contrary.



David A. Clarke Jr.
Sheriff

County of Milwaukee
Office of the Sheriff



February 6, 2015

Unites States Senate
Committee on the Judiciary
C/O The Honorable Charles E. Grassley, Iowa, Chairman

Chairman Grassley, and esteemed members of the Committee,

Thank you, sincerely, for your referred questions, received February 5, entitled, *Subject: 1-28/29-15 Attorney General Nomination - Questions for the Record (Clarke)*.

Please accept my answers as provided below.

1. *What has your experience been, as a local police officer, working with the local U.S. Attorney's Office in prosecuting criminal cases? Which federal law enforcement agencies does the Milwaukee County Sheriff's Office work with? Does your office participate in any task forces with federal law enforcement?*

I have consistently found that US Attorneys empowered to run the Eastern District of Wisconsin have been highly qualified, doggedly committed to justice for crime victims and the pursuit of the criminals, and voicing of a desire to cooperate with state and local law enforcement in their District to achieve these goals. Unfortunately, I have often noted that their thresholds to instigate Federal prosecutions are higher than I have thought wise. I believe that we have reached a point in our many of our urban centers, and specifically in Milwaukee, that most any multiple prior-convicted felon who uses a firearm in the commission of a crime of violence ought be referred for federal prosecution based on the much higher conviction and resultant custodial rates that the federal system not only offers but achieves. I believe that the creative use of the Hobbs Act, specifically as it relates to armed robbery crews, should be the federal norm until this violent urban crime is better in hand. Especially as it relates to what are clearly career criminals. My office currently participates in the Milwaukee ATF Task Force, the FBI Joint Terrorism Task Force and Milwaukee's Violent Crime Task Force efforts, the US Marshal's Service Fugitive

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Task Force, and the SE Wisconsin HIDTA. We also routinely work, in ad hoc fashion, with the US Postal Inspection Service, US Secret Service, Transportation Security Administration (at the General Mitchell International Airport, which my office polices) and Immigrations and Customs Enforcement.

2. *What types of offenders are referred to the federal system for prosecution and for what types of crimes? Are these the types of crimes that are the most problematic in the Milwaukee County communities? Do the majority of cases going through the federal system involve offenders previously arrested or prosecuted in the state? What crimes do the repeat offenders mostly commit?*

In Milwaukee County, a “gentlemen’s agreement” exists between the locally elected District Attorney and the US Attorney for the Eastern District that arrests conducted by state and local officials be presented to the DA’s office, initially, for the consideration of criminal charges and that coordination between the two offices will occur to achieve referral to the appropriate pathway in the interest of justice and, presumably, the pursuit of maximal penalties. Whereas I would prefer to see the majority of armed robbery and gunfire cases (particularly with prior convicted felons involved) handled as federal prosecutions, I generally see more Racketeer Influenced and Corrupt Organizations (RICO) and Continuing Criminal Enterprise (CCE) prosecutions exclusively. I would prefer to see more opportunistic use of Armed Career Criminal and Hobbs Act prosecutions. Our issues of home invasion burglaries, armed robbery crews, and shootings are the greatest threat to daily life in our city. Over the past twenty years the rise of the spiraling, worsening repeat offender, what I often term publicly the “armed career criminal,” is the result of a soft-on-crime therapeutic model of justice and reflects a lack of will in the local judiciary to punish effectively. These issues are largely mooted in the federal system, making that a more attractive alternative for meaningful prosecutions.

3. *Does it make a difference when these offenders are prosecuted in the federal rather than the state system? Please explain.*

Simply put: In the federal system, more positive outcomes are achieved. More guilty pleas (or findings of guilt in the rare instances of trial) result and greater custodial time is levied. But one example: In looking at Straw Purchaser investigations in Milwaukee occurring in a more than decade-long period between 2001 and 2012, my office noted a meager 46% conviction rate at the state level...with 34% of issued cases reduced, amended, plead down or dismissed entirely in exchange for a negotiated, watered down resolution, often to a separate charge. For the similar Federal statute, with a similar penalty exposure as the state charge, compare the results:

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Conviction %: Federal 85% (State 46%) / % Convicted Receiving a Sentence to Prison: Federal 85% (State 20%) / Average Custodial Time Levied: Federal 47 months (State 7.5 months).

4. *You testified that criminals were afraid of the federal system. For example, you testified that to convicted felons, it means nothing to be prosecuted at the state level. Why is this the case? How is the federal system different?*

I believe that, at least in the foreseeable short term, if we are keen to see real reductions to the bloodshed in the streets, all gun crimes involving prior convicted felons should, as statutes allow, be prosecuted federally...like local communities did in the past under gun violence programs like Project Trigger-Lock and Ceasefire. Federal convictions bring higher conviction rates, and longer and more certain prison sentences. Having seen how even hardened criminals react when they learn that a federal indictment has been handed down, my 37 years have shown me that the street criminals terrorizing our city fear the federal system of prosecution, not state court prosecutions. They count on getting a third, fourth and fifth "second chance" in a state court.

5. *Based on your experience, have federal mandatory minimum sentences helped in the communities you've worked in? If so, how?*

Federal Mandatory minimum sentences have struck terror into the hearts of career criminals...and have provided longer periods of respite for the impoverished and crime riddled communities that can least afford their return. These are, generally, not the strongest communities that might have structures in place to absorb such a negative impact. But they are communities filled, overwhelmingly, with hard-working people, often minorities, struggling against issues of poverty and violence but committed to a better life. The stringent use of the Armed Career Criminal Act, in which persons convicted for illegal gun possession with three prior convictions for serious drug offenses or violent felonies receive a sentence of 15 years as a mandatory minimum, is a game changer. Additionally, federal minimum sentences address the oft-called "revolving door" recidivist nature of the state level criminal justice system. Longer periods of certain incarceration allow scant (and expensive) law enforcement resources to turn their attention to other pressing needs...and may reverse the overwhelmed calls for service queue in American policing that had led to a disturbing rise in police response times.

6. *Why would altering federal sentences, including mandatory minimum sentences for drug offenses, be short-sighted? Do you think that lowering or dispensing with federal mandatory minimum sentences would hurt crime victims?*

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I rail against the leniency of a numb judiciary that fails to apply the weight of our great society's collective resolve until the criminal action becomes so horrific in its ultimate act that even the meek finally take notice. Quite bluntly, I am convinced that too many County Circuit Court judges have not shown themselves to be trusted to sentence persons illegally in possession of a gun, even when having displayed a pattern of increasing violence, to substantial prison terms. There is, instead, a disturbing pattern of light sentencing that demonstrates a tendency to stay in the shallow end of the pool. The current condition, in the state justice system, of an over-reliance on what is often (and erroneously) referred to as "second chance" programs, and a soft-on-crime therapeutic model, returns many repeat and violent felons back into high crime neighborhoods after a short stay in my county jail or state lockup, only to obtain another firearm. This broken model has no deterrent effect on changing behavior, or sending a message to illegal gun-toters, as to what will certainly happen to them if they violate our gun laws involving violence. Those who have been arrested for felony violations, five, six, seven or more times, are well beyond a "second" chance. They need to have severe consequences applied to their antisocial behavior. We cannot afford to allow complete sentencing discretion for subsequent gun violations to reside within a judiciary who I fear have bought in to social engineering experiments at the expense of our urban residents. The result, a soft-on-gun-crime model, is putting police officers, minority communities and all law-abiding citizens at risk. And so, with what I have seen over the least 37 years at the state level, I fear that altering federal mandatory minimum sentences for drug offenses, when coupled with weapons or prior crimes of violence, would indeed be short-sighted and that dispensing with federal mandatory minimum sentences would lead the federal judiciary to the place that I have seen it lead the local judiciary.

7. What were the circumstances of the death of 10 year old Sierre Buyton? How many prior arrests and convictions did the offenders who shot and killed her have?

This past summer, on May 21, 19-year-old Sylvester Akeem Lewis rode by the Clarke Street Elementary School's playground on a bicycle that he had stolen moments before. When confronted by another area resident about other area crimes in which Lewis was purportedly involved, Lewis did what too many do: produced a handgun and responded to conflict with violence. Milwaukee Police found 16 empty shell casings near the scene, and 10-year-old Sierra Guyton lay dying on the playground. In the words of the prosecuting attorney at trial, she "held on to life" after the May shooting and died on July 13, after being taken off of a ventilator. After trial, Sylvester Akeem Lewis was found guilty this past November of First-degree Reckless Homicide; First-degree Recklessly Endangering the Safety of Another; and being a Felon in Possession of a Firearm. He was sentenced to 44 years in prison, the prosecutions recommended

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term, with 17 years of extended supervision when released. Sylvester Akeem Lewis had 11 juvenile arrests before "graduating" to the adult system, and a prior adult arrest for Felony Burglary or a Building or Dwelling, Misdemeanor Resisting or Obstructing an Officer, and Misdemeanor Escape. For those adult crimes, even with a lengthy and atrocious juvenile record, he received only 12 months in the Milwaukee County lockup...with even that time stayed in favor of 3 years' probation. The probation he was serving, in the community, the morning he killed Sierra Guyton.

In closing, testifying before the committee at the *Attorney Generals Nomination Hearing* this past January was a highlight of my governmental life, now stretching into its 38th year. I am certain it would be for any American law enforcement officer, and I am honored that I was selected to represent a profession that has been my proudest life's work.

Sincerely,

A handwritten signature in black ink that reads "David A. Clarke, Jr." in a cursive script.

David A. Clarke, Jr.
Sheriff, Milwaukee County, Wisconsin

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR CORNYN

1. Please give me three examples of where you disagree with Attorney General Eric Holder's decisions.

RESPONSE: Every Attorney General must decide on priorities for the Department of Justice. If I am fortunate enough to be confirmed as Attorney General, I would bring my own personal approach to decisions about the Department's priorities, an approach that would emphasize (1) fostering a new and improved relationship with this Committee, the United States Senate and the entire United States Congress, (2) enhancing the Department's commitment to combating the ever-growing threat of cybercrime, and (3) committing additional attention to the scourge of human trafficking which subjects the most vulnerable among us to a modern-day nightmare of sexual slavery.

2. As U.S. Attorney in the Eastern District of New York, what mistakes have you made?

RESPONSE: In July 2012, in response to a pronounced spike in cybercrime, I reorganized the United States Attorney's Office's Criminal Division to expand the Office's extraordinarily successful terrorism unit into a new National Security & Cybercrime Section. In hindsight, given the success of that reorganization in attacking the problem of cybercrime in the Eastern District of New York, through increased investigations, prosecutions, and partnership with the private sector, I have come to believe that the reorganization should have occurred sooner. Drawing on that experience, if I am fortunate enough to be confirmed as Attorney General, I am prepared to ensure that the Department of Justice is proactive and forward-leaning in addressing the threat posed by cybercrime.

3. What assurance can you provide that you will prevent the President from violating the Constitution?

RESPONSE: The Attorney General must be a forceful, independent voice of justice and a fierce defender of the constitutional rights of all Americans. I have devoted my professional life to the pursuit of justice and the defense of the ideals and principles set forth in the Constitution of the United States of America. If confirmed as Attorney General, I pledge to Congress and the American people that the Constitution, the bedrock of our system of justice, will be my lodestar as I exercise the power and responsibility of that position. I will never forget that I serve the American people—all of the American people, from every state, every community, and every walk of life.

4. On March 11, 2013, Texas applied to the Department for expedited certification under 28 U.S.C. § 2265. On July 18, 2013, Senator Cruz and I wrote to Attorney General Holder asking him to inform us when he would make a decision. He did not decide, or respond to the letter. Will you commit to approve the § 2265 application submitted by Texas almost two years ago? And, if not, please explain why.

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not encountered the certification process under 28 U.S.C. § 2265. My limited understanding is that the certification process under 28 U.S.C. § 2265 has been delayed because of pending litigation challenging that process. If I am fortunate enough to be confirmed, I would expect to learn more about this issue.

5. In *Holt v. Hobbs*, the Supreme Court ruled unanimously that the Religious Land Use and Institutionalized Persons Act required the Arkansas Department of Corrections to accommodate the religious liberty of a prison inmate and allow him to grow a beard in observance of his religious faith. In her concurrence, Justice Ginsberg wrote: “Unlike the exemption this Court approved in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U. S. ____ (2014), accommodating petitioner’s religious belief in this case would not detrimentally affect others who do not share petitioner’s belief.”

- a. Do you believe the scope of an American’s religious liberty – protected by the Constitution and statutes – is inherently limited by whether or not other Americans might be affected by one person’s religious belief?

RESPONSE: The Religious Freedom Restoration Act’s text states that a burden on religious exercise is impermissible if (1) it is a “substantial[] burden” and (2) it is not “in furtherance of a compelling governmental interest” and is not “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1. The Supreme Court has held that the government does not have “an entirely free hand to impose burdens on religious exercise so long as those burdens confer a benefit on other individuals,” but that “courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries,” which “will often inform the analysis of the Government’s compelling interest and the availability of a less restrictive means of advancing that interest.” *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 (2014) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (applying RLUIPA)).

- b. Do you accept *Burwell v. Hobby Lobby* as binding precedent?

RESPONSE: Yes, the decisions of the Supreme Court are binding.

6. The Department is currently suing Texas because of its common-sense requirement that voters show ID to vote. The Supreme Court held in *Crawford v. Marion County* that voter ID laws are constitutional-and further held that voter ID laws are a legitimate means

of deterring voter fraud, even in States with zero recorded incidents of voter impersonation.

- a. Do you agree with the Supreme Court's decision in Crawford?

RESPONSE: The decisions of the Supreme Court represent the law of the land. My general understanding is that in *Crawford* the Supreme Court decided certain facial constitutional challenges to one state's particular voter identification law, based on the facts and arguments in that case. I understand that the Department is addressing the meaning of *Crawford* in certain cases that are currently pending, so I cannot comment further.

7. In its litigation with the State of Texas over voter ID, parties to the action argued that the state's voter ID requirement constituted a "poll tax" barred by the 24th Amendment. The Department of Justice did not take that position in the litigation. Do you agree that the law in question is not a poll tax?

RESPONSE: Because these issues are currently pending in the Texas case in which the Department is participating, I cannot comment on this question.

8. In January 2012, the President made appointments to the National Labor Relations Board. The Senate did not consent, so the President purported to use his authority under the Recess Appointments Clause.
 - a. The Supreme Court held that "the President lacked the power to make the recess appointments here at issue." Do you accept the Court's ruling?
 - b. Do you agree with the Court that the President violated the Constitution in making the appointments at issue?

RESPONSE: It is my understanding that in *National Labor Relations Board v. Noel Canning*, 573 U.S. ___, 134 S. Ct. 2550 (2014), the Supreme Court held that the President's appointment under the Recess Appointments Clause of three members of the National Labor Relations Boards during a three-day period between two pro forma sessions of the Senate were not valid. The Court's decision is the law of the land, and such appointments would not be consistent with the Constitution in the future.

9. On April 15, 2009 the Counsel to the President issued an unpublicized memorandum ordering all executive departments and agencies to consult with White House Counsel on any FOIA-requested documents involving "White House equities." This policy permits the White House to filter any FOIA request that might relate to the White House in some fashion. There is no exemption in the Freedom of Information Act for "White House equities," nor does FOIA give White House Counsel the authority to intervene in FOIA requests.

- a. If confirmed as Attorney General, you will have primary authority over agency implementation of FOIA. Will you continue to allow this practice?
- b. If you will not stop this practice, will you commit to making this process more transparent, so that requestors know when their request has been reviewed and/or censored by White House Counsel's office?

RESPONSE: The Freedom of Information Act (FOIA) plays a vital part in our democracy. The Department of Justice, in turn, plays a pivotal role in guiding agencies in their administration of this important statute. While I am not familiar with the particular memorandum you reference, I am committed to ensuring that the law is implemented in an efficient and transparent manner, in keeping with its underlying purpose.

10. According to the Center for Effective Government nearly half of the largest agencies in the federal government are failing in their implementation of FOIA. The Associated Press reported last year that the use of the deliberative process exemption to withhold information is at an all-time high. And reporters are expressing mounting frustration at the uselessness of FOIA, leading one reporter to say at your confirmation hearing that FOIA "is pretty much pointless and senseless now in its application at the federal level. It does no good." This is unacceptable.

- a. If confirmed as Attorney General, what will you do to improve FOIA compliance within DOJ and at other agencies? Please list specific measures you will take.

RESPONSE: As mentioned above, the FOIA plays a vital part in our democracy, and the Department of Justice, in turn, plays a pivotal role in guiding agencies in their administration of this important statute. I believe that agency personnel involved in any aspect of FOIA administration should receive training regarding their obligations under this statute, should have resources available to them to assist in their day-to-day administration of the law, and should be held accountable for their progress. These are all areas where the Department of Justice can continue its work of encouraging full and proper compliance with the law.

11. The War Powers Resolution requires that the President receive Congressional authorization for any use of military force in hostilities that extends beyond 60 days. We have now been engaged in hostilities with ISIL nearly 6 months—well past the 60-days required by the War Powers Resolution.

- a. Do you believe the War Powers Resolution is binding on the President?
- b. If so, do you think that the conflict with ISIL qualifies as "hostilities" under the War Powers Resolution, such that the President must have Congressional authorization?

RESPONSE: The War Powers Resolution is a duly enacted law of the United States and therefore binding on the President to the extent that it is consistent with the Constitution. I have not had the occasion to address the question in my role as a United States Attorney, but it is my understanding that, over the years, there has been public debate about the constitutionality of certain provisions of the War Powers Resolution. It is also my understanding that whether U.S. military forces are engaged in “hostilities” as used in the War Powers Resolution is a highly fact-specific question, and I am not at present fully informed about the nature and scope of our military operations against ISIL. Regardless of whether the War Powers Resolution imposes a binding requirement for congressional authorization under the present circumstances, and whether the AUMFs to which I refer in my next answer give that authorization, I agree with the President that we are strongest as a Nation when the Executive and the Congress work together on the use of military force abroad, and, should I be confirmed as Attorney General, I would support the President’s efforts to work with Congress to enact a resolution specifically authorizing the use of force against ISIL.

12. The President has claimed varying theories of authority for his use of military force since hostilities began in August, beginning first with Article II of the Constitution, then moving to the 2001 AUMF for al-Qaeda, then on to the 2002 AUMF for Iraq and back again to the 2001 AUMF.
 - a. Under the 2001 AUMF for Al-Qaeda can the President continue the use of force against ISIL indefinitely, without ever seeking Congressional authorization?
 - b. If not, at what point is the President constitutionally and statutorily required to seek Congressional authorization?

RESPONSE: Although I have not had the occasion to address the question in my role as a United States Attorney, it is my understanding that the Administration has concluded that the 2001 AUMF provides statutory authority for the current military operations against ISIL and that the 2002 AUMF also provides statutory authority for those operations at least to the extent that they are necessary to address the threat posed by ISIL’s operations in Iraq or to help establish a stable, democratic Iraq. Regardless of whether any additional congressional authorization might be necessary at any point, I agree with the President that we are strongest as a Nation when the Executive and the Congress work together on the use of military force abroad, and, should I be confirmed as Attorney General, I would support the President’s efforts to work with Congress to enact a resolution specifically authorizing the use of force against ISIL.

13. In the 2011 conflict with Libya, the President neither sought nor received congressional authorization for the use of military force, even though air strikes continued long past the 60-day requirement of the War Powers Resolution. The President’s tenuous legal theory was that the air strikes were not “hostilities” for purposes of the War Powers Resolution. This was in direct conflict with the legal opinion of the Department’s Office of Legal

Counsel. If you are confirmed as Attorney General and the President acts counter to your counsel in similar manager—possibly violating the law—what will you do?

RESPONSE: Should I be confirmed as Attorney General, I would provide the President with vigorous and independent legal advice in all situations.

14. The Department has secured billions of dollars through settlement agreements over the past few years, but not all of the money claimed in these settlements has gone to a governmental entity. For example, in the recent \$16.65 Bank of America settlement—a case in which your office participated—less than 60% of that money was paid to a governmental entity. \$7 billion of the settlement is to be spent independently by Bank of America on a nation-wide “consumer relief” program. The Department does not have the statutory authority to design a nationwide consumer relief program and direct appropriations and grants from public funds toward that program. That is a legislative power. Yet, it appears to have done so through a settlement agreement.

- a. Please explain where the Department has found the authority to appropriate public funds in such a manner and to design a public consumer relief program implemented by a private entity.

RESPONSE: The 2014 \$16.65 billion settlement with Bank of America constitutes the largest settlement with a single entity in the history of the Department of Justice. Among its other components, the settlement features a \$5 billion penalty under the FIRREA statute, payable to the U.S. Treasury, which represents the largest penalty ever assessed under that statute. In addition, the settlement requires the bank to make payments to the Department’s various federal and state law enforcement partners.

No public funds from the Bank of America settlement—whether from the FIRREA penalty or other payments to federal or state agencies—were directed toward consumer relief. Apart from these various payments, the bank agreed, as part of the referenced settlement agreement, to provide \$7 billion in consumer relief. The consumer relief portion of the settlement, however, will not be funded through public moneys. Instead, these are separate private funds—provided by the settling banks as part of the settlement agreement—that are dedicated to assisting consumers in the housing market, including struggling homeowners who have suffered as a result of the collapse of the housing market. That collapse was caused in large part by the conduct that was the basis for the Bank of America investigation—namely, the fraudulent packaging and selling of Residential Mortgage-Backed Securities (RMBS).

- b. Please describe what oversight and transparency measures have been put in place to monitor the expenditure of these funds, and what control, if any, the federal government will have over how this money is spent, other than through the broad terms of the settlement agreement. Additionally, please describe what controls are in place to ensure that this money will go to the victims of the alleged

wrongdoing—for instance, the purchasers of the residential mortgage-backed securities—rather than interest groups listed in the settlement agreement.

RESPONSE: The consumer relief provisions in the Bank of America agreement explicitly require the bank to provide specific amounts and types of consumer relief, targeted to help precisely those Americans in need of such relief—those who are still suffering the effects of the misconduct that was the basis for the government’s investigation. In addition, a series of provisions in the Bank of America settlement agreement require oversight of, and transparency into, Bank of America’s activities under the consumer relief provisions of the settlement agreement.

An annex to the settlement agreement provides very specific requirements for activities the bank must undertake to satisfy its consumer relief obligations. Among other provisions, for example, Bank of America is obligated to accrue at least \$2.15 billion in credits for first lien principal forgiveness for homeowners. And the consumer relief annex—which contains provisions that the bank agreed to at the time of the settlement—provides precise parameters for the bank’s satisfaction of its consumer relief obligations. The federal government does not dictate individual consumer relief decisions that the bank might make (such as, for example, which specific homeowners should be entitled to mortgage modifications).

Beyond these requirements, the settlement agreement establishes that an independent monitor—paid for by the bank—is charged with determining whether the bank has satisfied its consumer relief obligations. The settlement agreement further requires Bank of America to provide the monitor with all documentation necessary for the monitor to serve this function. Moreover, the settlement agreement requires the monitor to issue regular public reports documenting the manner in which Bank of America is satisfying its consumer relief obligations. The Bank of America monitor has established a website, <http://bankofamerica.mortgagesettlementmonitor.com>, where the monitor’s reports, as well as other information about the settlements and the consumer relief provisions, are available to the public. These various provisions all help to assure that the bank lives up to its consumer relief obligations, and does so in a transparent manner.

15. State financial regulators in my state and others play an important role in protecting consumers and ensuring that we have robust and diverse financial services marketplaces in our states. Licensing is an important tool for these regulators by seeking to ensure businesses and individuals meet certain professional standards and conduct themselves with integrity. Many financial regulators are required to review criminal background information as part of the licensing process. It is my understanding the FBI denied Tennessee State officials access to any criminal history data starting January 1, 2015 and will deny Georgia access in July 2015. The FBI objected to these states’ statutes authorizing --but not mandating -- use of a nationwide state licensing system to process state-required criminal background record on licensees. I am concerned because Texas has similar language in its licensing laws. As Attorney General, would you promise to work with states to ensure state regulators have an efficient electronic system to access

FBI criminal background information for licensing purposes, as authorized under P.L. 92-544?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had the opportunity to study this issue, but if I am confirmed, I would expect to learn more about it.

16. Last November, President Obama and the Department of Homeland Security announced a series of unilateral and unconstitutional Executive Actions that will suspend enforcement of our immigration laws against a class of up to 4 million illegal immigrants. Under these executive actions, certain classes of illegal immigrants will be allowed to remain in the United States and obtain work authorization. Before President Obama formally announced these Executive actions, the Department of Justice Office of Legal Counsel issued a memorandum agreeing that the President had the authority to unilaterally grant amnesty to certain classes of illegal immigrants.

a. Do you agree with the legal analysis contained in the OLC memorandum supporting President Obama's immigration Executive Actions?

RESPONSE: As I indicated at my hearing, the opinion by the Office of Legal Counsel is based upon a thorough review of precedent, prior actions by Congress, as well as the discretionary authority of the Department of Homeland Security to prioritize the removal of the most dangerous aliens within the United States and recent border crossers. Accordingly, the legal analysis by the Office of Legal Counsel appears reasonable.

b. As a career prosecutor, have you ever been involved in a program through which certain classes of offenders were systematically granted deferred action or immunity from prosecution after admitting their crime in a written application?

RESPONSE: My understanding of the deferred action guidance issued by the Department of Homeland Security is that the guidance does not grant deferred action on a systematic basis. Instead, it establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation's immigration laws in order to prioritize the limited resources afforded to the agency. As a career prosecutor and a United States Attorney, I know full well the resource constraints that require those who enforce the law to prioritize the prosecution of those who pose the greatest threats to our country.

c. In your experience as a prosecutor, does the non-enforcement of a particular law generally incentivize or encourage future violations of that law?

RESPONSE: In my experience, the decision to prioritize the enforcement of a law against a set of particular individuals, such as those who present the greatest risk to our country's safety and

security, results in increased prosecutions against those bad actors, by allowing limited prosecutorial resources to be dedicated to that law enforcement effort.

- d. Are you concerned that President Obama's new deferred action program will incentivize or encourage future violations of our immigration laws?

RESPONSE: I am hopeful that the Secretary's efforts to prioritize the enforcement of our immigration laws against criminals and national security threats will encourage individuals within the country to abide by the law. It is also my understanding that the new removal priorities established by the Secretary include recent border crossers and visa overstays who are ineligible for deferred action. As a result, it would appear to discourage attempts to cross the border illegally at this time, as such persons would be a priority for removal.

- e. Under the theory of prosecutorial discretion advanced by the Department of Justice in the OLC memorandum regarding President Obama's immigration executive actions, would it be possible for the President to unilaterally extend deferred action to all 11 million illegal immigrants in the United States? If not, what is the limiting principle on Department of Justice's theory of prosecutorial discretion?

RESPONSE: I do not understand that question to have been presented to the Office of Legal Counsel, as that is not a situation that is presented by the memoranda issued by the Secretary. As the OLC opinion indicated, "[g]iven that the resources Congress has allocated to DHS are sufficient to remove only a small fraction of the total population of undocumented aliens in the United States, setting forth written guidance about how resources should presumptively be allocated in particular cases is a reasonable means of ensuring that DHS's severely limited resources are systematically directed to its highest priorities across a large and diverse agency, as well as ensuring consistency in the administration of the removal system." OLC Op. at 10. I would also note that the OLC opinion examined an additional proposed deferred action program—for parents of recipients of deferred action under the Deferred Action for Childhood Arrivals program—and determined that it would not be permissible, reflecting a clear limit to discretion.

- f. Under President Obama's Executive Actions, many illegal immigrants who have been convicted of serious crimes in the United States will be eligible for deferred action and work authorization. For instance, a criminal alien would not be categorically excluded from receiving amnesty, even if they were convicted of the following types of offenses: child pornography possession, child abuse, assault, abduction, robbery, voter fraud, and many others. As a career prosecutor, you have routinely put criminals like these behind bars. Do you agree that granting deferred action to criminal aliens instead of removing them from the country will jeopardize public safety?

RESPONSE: It is my understanding that deferred action is not available to individuals convicted of criminal offenses and who pose a threat to national security or public safety. It is my expectation that the crimes to which you refer would ordinarily fall within these removal priorities.

- g. In 2013, the Department filed an amicus brief in a Ninth Circuit case arguing that the State of Arizona should be required to issue drivers' licenses to illegal immigrants who are beneficiaries of the DACA program. Do you agree with this analysis? If so, do you believe that states should have the right to deny drivers' licenses to individuals covered by President Obama's November 2014 immigration executive actions? If confirmed as Attorney General, would you support litigation requiring states to issue driver's licenses to such individuals?

RESPONSE: As the United States Attorney for the Eastern District of New York, I was not involved in the brief to which the question refers. It is my understanding, however, that as a matter of preemption, neither the 2014 Deferred Action Guidance nor any federal statute compels States to provide driver's licenses to DACA and DAPA recipients, so long as the states base eligibility on existing federal alien classifications—such as deferred action recipients, or other categories of aliens—rather than creating new state-law classifications of aliens.

17. During a hearing last Congress, Gayle Trotter of the Independent Women's Forum testified before the Senate Judiciary Committee that guns are "a great equalizer" for women who are trying to protect themselves from aggressors. In my home State of Texas there have been countless examples of brave women standing their ground and defending themselves with firearms. For instance, last year in the South Texas city of Palmview, a pregnant woman stood her ground against two would-be home invaders and opened fire—forcing the criminals to retreat. They were later apprehended by SWAT officers after a long standoff. As Attorney General, will you work to encourage lawful firearm possession among women so that they are better equipped to defend themselves and their families against criminals?

RESPONSE: The Supreme Court has made clear that the Second Amendment protects the individual right of law-abiding citizens—both men and women—to keep and bear arms for self-defense in the home. If confirmed, I will ensure that the actions of the Department of Justice are consistent with the Constitution, including the Second Amendment.

18. In 1994, President Clinton and Congress enacted an "assault weapons ban" that prohibited the purchase of a large number of now-common self-defense and hunting firearms. In the decade since expiration of the ban, violent crime rates have dropped, while millions of law-abiding Americans have purchased self-defense weapons that were once prohibited under the assault weapons ban. Do you believe that the assault weapons ban was effective, and if confirmed as Attorney General, would you support the re-enactment of this type of gun ban?

RESPONSE: As a United States Attorney, one of my highest priorities has been to protect Americans from violent crime, including violent gun crime. I understand that the Administration supports passage of legislation that would strengthen and enhance the now-sunsetted 1994 Public Safety and Recreational Firearms Use Protection Act. If confirmed, I look forward to working with Congress on any appropriate legislation toward that end.

19. From 2010-2011, the Department operated a controversial gun-walking program known as "Operation Fast and Furious." As part of that program, Department officials knowingly transferred thousands of firearms to drug cartel associates and straw purchasers with no intent that these weapons would be tracked or interdicted. All told, the Department lost track of nearly 2,000 weapons that were put into the hands of drug cartel agents as part of this reckless operation—many of which have been recovered at violent crime scenes on both sides of our Southern border. Tragically, weapons from Operation Fast and Furious were used in the December 2010 murder of United States Border Patrol Agent Brian Terry. Throughout congressional investigations into the Operation Fast and Furious tragedy, Attorney General Holder repeatedly misled and stonewalled Congress, withholding tens of thousands of important documents through frivolous claims of executive privilege and making multiple inaccurate statements concerning his knowledge of the program.

- a. Do you believe that the gun-walking tactics used in Operation Fast and Furious were acceptable?

RESPONSE: In my position as a United States Attorney, I was not personally involved in either the underlying investigation of Operation Fast and Furious nor the Department's responses to Congress regarding it. I share the perspective of many, including the Department's Inspector General and Attorney General Holder, that this was a flawed operation.

- b. Can you think of any legitimate law enforcement rationale for transferring guns to drug cartel agents without interdicting or tracking them?

RESPONSE: The Department's law enforcement components and the United States Attorneys' Offices take seriously the need to ensure that investigations and prosecutions are conducted in a way that preserves public safety as well as officer safety. Accordingly, the Department has provided guidance to all United States Attorneys' Offices regarding risk assessment and mitigation for law enforcement operations in criminal matters.

- c. During Operation Fast and Furious, was it appropriate for Department of Justice officials to demand that licensed and law-abiding firearms dealers participate in the illicit transfer of weapons to suspected straw purchasers?

RESPONSE: As noted above, in my position as a United States Attorney, I was not personally involved in either the underlying investigation of Operation Fast and Furious or the

Department's responses to Congress regarding it. Generally, I believe it would be inappropriate for Department officials to demand that citizens participate in the illicit transfer of weapons.

- d. If confirmed as Attorney General, would you ever allow Department of Justice officials to request that law-abiding Americans violate a federal statute?

RESPONSE: The Department of Justice has robust guidelines governing and limiting situations in which the government may authorize a citizen to engage in otherwise unlawful activity.

- e. Will you pledge to fire all Department of Justice employees who utilize gun-walking tactics similar to those in Operation Fast and Furious, or who were directly involved in the execution of that program?

RESPONSE: Just as I have in my tenure as a United States Attorney, if confirmed as Attorney General, I would take seriously all allegations regarding inappropriate actions by Department employees, and would follow well-established laws and procedures regarding disciplinary actions against employees found to have engaged in inappropriate conduct.

- 20. According to an unclassified threat assessment from the Texas Department of Public Safety: "Mexican cartels control most of the human smuggling and human trafficking routes and networks in Texas. The nature of the cartels' command and control of human smuggling and human trafficking networks along the border is varied, including cartel members having direct organizational involvement and responsibility over human smuggling and human trafficking operations, as well as cartel members sanctioning and facilitating the operation of human smuggling and human trafficking organizations." Do you agree that human smuggling networks and drug cartels are directly responsible for many cases of human trafficking in the United States? If confirmed as Attorney General, will you prioritize the investigation and prosecution of these networks and organizations?

RESPONSE: I understand that human trafficking is a serious threat in Texas, and am told that it is perpetrated by a wide range of individual smugglers, loosely affiliated smuggling networks, and organized smuggling rings, often only loosely and informally associated with the trafficking networks that lure the victims with false promises, arrange the smuggling, then coerce and exploit the victims once in the United States. Cartels, human smuggling organizations, and human trafficking networks all present serious criminal threats, and if I am confirmed as Attorney General, I will continue to use all available law enforcement tools to combat them all, and to continue investigating the complex relationships among them. I further commit that I will continue to build on the Department's record of vigorously prosecuting those who prey on those most in need of our protection. And I will continue to provide strong and effective assistance to survivors who we must both support and empower.

21. According to an October 2014 study by the Human Trafficking Pro Bono Legal Center, Department of Justice prosecutors secure restitution orders for victims in only 36% of human trafficking cases, and nearly half of U.S. Attorneys' Offices that have handled human trafficking cases have failed to win any compensation for victims. Do you agree that victim compensation and financial contribution from criminals should be a priority in human trafficking prosecutions? If confirmed as Attorney General, will you work with me to ensure that Department of Justice officials are adequately trained and instructed to seek victim restitution orders in all human trafficking cases?

RESPONSE: Securing restitution for trafficking victims is an essential part of the Department's victim-centered approach to trafficking investigations and prosecutions. If I am confirmed as Attorney General, I would welcome the opportunity to work with you and your staff on the issue of seeking restitution for victims of trafficking. I look forward to continuing the Department's record of secure significant restitution orders, as provided by law, and seeking justice for victims of human trafficking.

22. Do you believe that mandatory minimum sentences are an appropriate law enforcement tool in crimes involving the sexual exploitation and slavery of children?

RESPONSE: Those who exploit children commit heinous crimes against the most vulnerable members of society. Congress has responded to the seriousness of these offenses by enacting statutory schemes that include mandatory minimum sentences for many child sexual exploitation offenses. These sentences clearly signal that the sexual exploitation of children will not be tolerated, and I will ensure that those who do so will face appropriate punishment. The Department vigorously enforces these laws, and has placed the protection of children and other vulnerable populations from sexual exploitation and slavery at the top of the Department's list of priorities.

23. Do you support amending the federal hate crimes statute to cover the intentional targeting of a law enforcement officer?

RESPONSE: I attended the funerals of New York City Police Department Detectives Rafael Ramos and Wenjian Liu. The grief and the sense of loss from their tragic deaths could be felt across New York City. We cannot allow our law enforcement officers to be targets. We must provide law enforcement officers with the protections they need in order to serve and protect our communities.

The President recently established the Task Force on 21st Century Policing, and it will consider the proposal by the Fraternal Order of Police to expand the existing federal hate crimes statute to include law enforcement officers who have been targeted for violence because of their official position and duties. I look forward to hearing from the Task Force on this important subject.

If confirmed as Attorney General, one of my priorities will be to ensure that law enforcement officers have the tools that they need to do their jobs and to do them safely.

24. The rape kit backlog is a national scandal with tragic consequences for crime victims. Experts estimate that hundreds of thousands of rape kits currently sit on shelves and in evidence lockers across the country gathering dust—each one holding the potential to imprison a rapist and deliver justice for victims of this horrible crime. In 2013, I introduced the SAFER Act, which was enacted into law and amended the *Debbie Smith Act* to both increase the funding available to support the testing of kits and to support audits, by local law enforcement, of their un-submitted kits. Numerous states, including Texas, have enacted laws requiring statewide audits, and these SAFER grants will make an enormous difference in supporting law enforcement's efforts to end the rape kit backlog forever. Though the SAFER Act has been law for nearly two years, Attorney General Holder and the National Institute of Justice have failed to fully implement this law.

- a. Is there any excuse for Attorney General Holder's failure to fully implement the SAFER Act?

RESPONSE: I share your strong commitment to eliminate the backlogs of sexual assault kits that are being discovered in some law enforcement agencies. I understand that the Department of Justice has been actively engaged with law enforcement partners to develop strategies to eliminate backlogs and hold offenders accountable, while providing support to victims. I am committed to continuing this important effort to facilitate the core elements of accountability and transparency consistent with the purposes of the SAFER Act.

- b. Do you think the failure to implement this law sends a poor message to sexual assault survivors?

RESPONSE: Sexual assault is a public health and public safety problem with far reaching implications. I am committed to ensuring implementation of various efforts to support state, local, and tribal work to improve sexual assault investigations and victims' services and assistance. I will continue the Department's efforts to fund strategies and programs designed to provide resources to prevent and reduce the risk of sexual assault and effectively respond to the needs of sexual assault victims, as well as partnering with law enforcement agencies to improve victim notification and support services.

- c. If you are confirmed as Attorney General, will you pledge to immediately and fully implement the SAFER Act, as enacted in 2013?

RESPONSE: As stated previously, I am unwavering in my commitment to reduce the sexual assault kit backlog and promote accountability and transparency, the core elements of the SAFER Act.

- d. Will you commit to work with me to ensure that the National Institute of Justice is in full compliance with the SAFER Act requirement that not less than 75% of funds appropriated under the Debbie Smith Act are being deployed to state and local governments to analyze crime scene evidence, rather than being used for federal purposes that are not expressly permitted under the statute?

RESPONSE: I am firmly committed to ensuring that NIJ, along with all of the components of the Department, comply fully with all applicable laws in carrying out their missions.

- e. Under current law, the National Institute of Justice is required to submit an annual report discussing their DNA backlog reduction grant expenditures, but these reports are often submitted to Congress more than one year after the conclusion of the covered Fiscal Year. As Attorney General, will you ensure that Congress receives annual DNA backlog reduction reports within 90 days of the end of each Fiscal Year?

RESPONSE: I am fully committed to ensuring that NIJ meets all requirements of providing reports to Congress in timely fashion.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR CRUZ

Questions on Executive Amnesty

I. Deferred Action

- On two occasions, the Obama Administration has granted amnesty (otherwise known as “deferred action” because it suspends removal proceedings otherwise required by law) to entire classes of illegal immigrants:
 - Deferred Action for Childhood Arrivals (“DACA”): In a June 2012 memorandum, then Secretary of Homeland Security Janet Napolitano announced that certain illegal immigrants under the age of 31 who came to the United States as children could apply for deferred action.¹
 - Deferred Action for Parental Accountability (“DAPA”): In a November 2014 memorandum, the current Secretary of Homeland Security Jeh Johnson expanded the DACA program to include childhood arrivals who are now over the age of 30 and announced a new program that would allow certain parents of children who are either citizens or lawful residents of the United States to apply for deferred action. This most recent program would grant amnesty to an estimated 5 million illegal immigrants.²

In a subsequent legal memorandum issued by the Department of Justice’s Office of Legal Counsel (OLC), the Administration justified the legality of its decision to grant deferred action to a class of 5 million illegal immigrants as a legitimate exercise of its prosecutorial discretion.³

1. Based on the material and information contained in the OLC opinion, please answer each of the following questions separately:

a. Do you agree or disagree with the legal conclusions in the OLC opinion?

RESPONSE: As I indicated at my hearing, the opinion by the Office of Legal Counsel is based upon a thorough review of precedent, prior actions by Congress, as well as the discretionary

¹ Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (Jun. 15, 2012).

² Jeh Johnson, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014).

³ U.S. Department of Justice, Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014).

authority of the Department of Homeland Security to prioritize the removal of the most dangerous aliens within the United States and recent border crossers. Accordingly, the legal analysis by the Office of Legal Counsel appears reasonable.

b. Cite the specific provisions of the United States Code that authorize the President to grant deferred action to illegal alien childhood arrivals and the illegal alien parents of U.S. citizens.

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

c. Define prosecutorial discretion.

RESPONSE: As I described during my testimony before the Committee, as a career prosecutor and United States Attorney, I know well that prosecutors, acting in good faith, must look at the facts of a matter and the law, and consider both the benefits of a prosecution as well as the resources necessary and available.

d. Are the President's actions a proper exercise of prosecutorial discretion as you have defined it and why?

RESPONSE: As I have stated, the memoranda issued by the Secretary of Homeland Security appears to be an exercise of discretion, consistent with stated congressional priorities, to focus limited agency resources on the prosecution and removal of high priority aliens, such as criminals, threats to national security, and recent border crossers.

e. Does the fact that Congress has expressly authorized deferred action for certain classes of removable aliens⁴ but not for the classes covered by DACA and DAPA establish that there is no authority for the President to grant deferred action under DACA and DAPA?

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

⁴ See e.g., 8 U.S.C. 1154(a)(1)(D)(i)(II), (IV) (providing that certain individuals are "eligible for deferred action"); 8 U.S.C. 1227(d)(1) (authorizing an "administrative stay of a final order of removal" for T and U visa applicants who can demonstrate a prima facie case for approval); 115 Stat. 272, 361 (authorizing "deferred action" for certain family members of lawful residents killed on 9/11); 117 Stat. 272, 361 (authorizing "deferred action" for certain family members of certain U.S. citizens killed in combat).

- Article II, Section 3 of the United States Constitution states that the President “shall take Care that the Laws be faithfully executed.” Although it may not be feasible for the President to enforce every law in every case, there is a difference between declining to enforce a law for an entire class of people (which is nothing more than rewriting the law) and declining to enforce a law based on the facts and equities of a particular case (which is a legitimate exercise of prosecutorial discretion).
- 2. Is it a violation of the Take Care Clause for the President to refuse to enforce the immigration laws for a distinct class of individuals who are not otherwise exempted by Congress?**

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department’s brief for a full discussion of this issue.

- 3. Do you believe the President has the authority to exercise executive discretion to:**
- a. categorically exempt a class of people from enforcement of the Affordable Care Act?**
 - b. categorically exempt a class of people from enforcement of federal environmental laws?**
 - c. categorically exempt a class of people from enforcement of the Internal Revenue Code?**

RESPONSE: To the extent that this question attempts to characterize the effect of the deferred actions on immigration by analogy to other enforcement prioritizations, my understanding of the deferred action guidance issued by the Department of Homeland Security is that the guidance does not grant deferred action on a systematic basis. Instead, it establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation’s immigration laws in order to prioritize the limited resources afforded to the agency. As a career prosecutor and a United States Attorney, I know full well the resource constraints that require those who enforce the law to prioritize the prosecution of those who pose the greatest threats to our country.

- In the lawsuit that Texas and more than 20 other states have brought against the United States challenging the President’s actions,⁵ the United States Government has taken the position that its deferred action decisions are judicially unreviewable non-enforcement decisions.⁶
- 3. Do you agree that the President’s decision to defer removal actions for certain categories of illegal aliens is unreviewable by Article III courts? If your answer is yes, please provide a detailed explanation as to why.**

⁵ See, e.g., <https://www.texasattorneygeneral.gov/files/e/press/files/20141203ImmigrationExecutiveOrderLawsuit.pdf> (last viewed Feb. 5, 2015).

⁶ Pl.’s Reply in Support of Mot. for Preliminary Inj., United States v. Texas, No. 1:14-cv-254 (S.D. Tex.) (“Plaintiffs’ redress . . . is through the political process, not the courts.” (quoting Def. Opp. at 29)).

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

Questions on Executive Amnesty

II. Work Authorization

- Under both DACA and DAPA, illegal immigrants granted deferred action would be eligible to apply for work authorization in the United States.

1. **Do you agree or disagree that the President lacks the authority to grant work authorization to illegal aliens who are eligible for deferred action under DACA or DAPA? If you disagree with this statement, please provide a detailed explanation as to why, including citations to the relevant statutory authority.**

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

2. **Do you agree or disagree that affirmatively granting illegal aliens the right to work is not an exercise of prosecutorial discretion? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

- In his November 20, 2014 memorandum on DAPA, Secretary Johnson cites Section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) as the basis for his authority to grant work authorizations to illegal aliens.⁷ For purposes of determining work authorization, that provision defines the term "unauthorized alien" as an alien who is not "(A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or *by the Attorney General*" (emphasis added). (Note: The language referencing the Attorney General represents unchanged "legacy" language that has not been changed since the Department of Homeland Security was first authorized in 2002.)

3. **Do you agree or disagree that the statutory language cited above means that the Secretary of Homeland Security has complete discretion to grant work**

⁷ Jeh Johnson, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014).

authorizations to any alien? If you agree with this statement, please provide a detailed explanation as to why.

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

4. Do you agree or disagree that the statutory language cited above gives the Secretary of Homeland Security complete discretion to grant work authorizations to all aliens? If you agree with this statement, please provide a detailed explanation as to why.

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

Questions on Executive Amnesty

III. Advance Parole as Pathway to Citizenship/Benefits

- INA Section 212(d)(5) (8 U.S.C. 1182(d)(5)) authorizes the Secretary of Homeland Security to parole otherwise inadmissible immigrants "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." INA Section 245(a) (8 U.S.C. 1255(a)), in turn, allows an alien to have his status adjusted to legal permanent resident if that alien was "admitted or paroled" into the United States.

1. Do you agree or disagree that the Secretary of Homeland Security lacks the legal authority to grant "advance parole" to illegal aliens covered by DAPA (i.e., the parents of U.S.-born children who, but for their unlawful presence, would be eligible for green cards)? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: As a United States Attorney who is not an expert in immigration law, I am not familiar with the authority that the Secretary of Homeland Security exercises over parole decisions. However, if confirmed as Attorney General, I will support the strong enforcement of our nation's immigration laws.

2. If you think that the Secretary of Homeland Security does have the legal authority to grant "advance parole" to illegal aliens covered by DAPA, do you agree or disagree that granting advance parole could allow the Secretary of Homeland Security to then grant lawful permanent resident status to those aliens, thereby placing them on a "path to citizenship"? If you agree with this statement, please provide a detailed explanation as to why.

RESPONSE: As a United States Attorney who is not an expert in immigration law, I am not familiar with the authority that the Secretary of Homeland Security exercises over parole decisions. However, if confirmed as Attorney General, I will support the strong enforcement of our nation's immigration laws.

Questions on Executive Amnesty

IV. Driver's Licenses to DACA and DAPA Recipients

- 1. Do you think that federal law compels states to issue driver's licenses to DACA and DAPA recipients who are in the United States illegally? Whether you answer yes or no, please provide a detailed explanation as to why.**

RESPONSE: As the United States Attorney for the Eastern District of New York, I was not involved in the preparation of the Department's amicus brief in the Ninth Circuit regarding this issue. It is my understanding, however, that as a matter of preemption, neither the 2014 Deferred Action Guidance nor any federal statute compels states to provide driver's licenses to DACA and DAPA recipients, so long as the states base eligibility on existing federal alien classifications—such as deferred action recipients, or other categories of aliens—rather than creating new state-law classifications of aliens.

Questions on DOJ Legal Positions and Practices

I. Attorney General's Advisory Committee

- It is our understanding that you have served on the Attorney General's Advisory Committee of U.S. Attorneys (Advisory Committee) almost since the start of your second tenure as United States Attorney for the Eastern District of New York. Specifically, since assuming your duties as United States Attorney on May 3, 2010, you were appointed by Attorney General Eric Holder, also in May 2010, to serve on the Advisory Committee.⁸ In September 2011, you were appointed by Attorney General Holder to serve as vice chair of the Advisory Committee.⁹ In January 2013, you were appointed by Attorney General Holder to serve as chair of the Advisory Committee,¹⁰ and you continue to hold that chair.

The Advisory Committee, according to regulation, appears to provide very broad latitude in terms of the type and scope of input the Advisory Committee and its members may

⁸ U.S. Department of Justice Press Release, *U.S. Attorneys Paul J. Fishman and Loretta E. Lynch to Lead Attorney General's Advisory Committee* (Sept. 1, 2011) (noting your initial appointment to the Advisory Committee in May 2010).

⁹ *Id.*

¹⁰ CNN Library, *Loretta Lynch Fast Facts*, CNN (Dec. 5, 2014) (noting your appointment as chair of the Advisory Committee in January 2013).

provide to the Attorney General, the Deputy Attorney General, and the Associate Attorney General.¹¹ The regulation provides (with emphasis added):

(b) The Committee shall make recommendations to the Attorney General, to the Deputy Attorney General and to the Associate Attorney General concerning *any matters which the Committee believes to be in the best interests of justice*, including, but not limited to, the following:

(1) *Establishing and modifying policies and procedures* of the Department;

(2) Improving management, particularly with respect to the relationships between the Department and the U.S. Attorneys;

(3) Cooperating with State Attorneys General and other State and local officials for the purpose of *improving the quality of justice in the United States*;

(4) Promoting *greater consistency in the application of legal standards throughout the Nation* and at the various levels of government; and

(5) Aiding the Attorney General, the Deputy Attorney General and the Associate Attorney General in *formulating new programs for improvement of the criminal justice system at all levels, including proposals relating to legislation* and court rules.¹²

1. **Do you agree or disagree that the subject matter scope of the Advisory Committee, as provided for in the above regulatory language, is essentially limitless? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: While the language of the regulation is broad, the purpose of the Committee is to provide the Attorney General with recommendations in the best interests of justice. The United States Attorneys conduct an extremely wide range of litigation in the United States District Courts throughout the country, and we work closely with state, tribal, and local officials and community organizations. As such, we provide the Attorney General with a perspective that is shaped by our diverse experiences as the Department's representatives around the country so that the Attorney General can make the most informed decisions regarding the Department's policies and procedures on any matter affecting the administration of justice.

2. **Have you, in any of your capacities on the Advisory Committee (i.e., as an entering member, vice chair, or chair) provided any written or verbal advice, feedback, or information, or communicated in any direct or indirect way, via**

¹¹ 28 CFR 0.10(b).

¹² 28 C.F.R. 0.10(b).

official or non-official channels, with either the Attorney General, the Deputy Attorney General, or the Associate Attorney General, on any of the following subjects:

- a. Any aspect of the Administration's immigration policy, including executive amnesty for illegal aliens or work authorization for illegal aliens?
- b. Any aspect of the Administration's approach to the Defense of Marriage Act (DOMA), including the Administration's decision to no longer defend DOMA in federal court?
- c. Any aspect of the Administration's enforcement of the Voting Rights Act or other federal laws pertaining to voting rights, including its resistance to states' efforts to enhance or enact voter identification laws or its selective enforcement of voting rights protections?
- d. Any aspect of the Administration's enforcement of federal drug laws, including its executive decisions to not pursue enforcement in states that have legalized marijuana for recreational use?
- e. Any aspect of the Internal Revenue Service's (IRS) political targeting of private organizations seeking tax-exempt status, including the decision to not appoint a special prosecutor to investigate that targeting?
- f. Any aspect of Operation Fast and Furious, including Attorney General Holder's contempt finding or the litigation related to that contempt finding?
- g. Any aspect of the Department of Justice's surveillance of reporters?
- h. Any aspect of the Department of Justice's application of the Foreign Corrupt Practices Act (FCPA), including discussion of potential FCPA targets?
- i. Any aspect of the Administration's response to the terrorist murder of U.S. citizens in Benghazi, Libya, on September 11, 2012, including decisions regarding the post-incident investigation by the Federal Bureau of Investigation?
- j. Any aspect of the Administration's decision to close the Guantanamo Bay Detention Facility (GTMO), including the decision to transfer detainees out of GTMO?
- k. Any aspect of the Administration's decision to close its Office of Political Affairs (OPA) in January 2011, including discussion with the U.S. Office of Special Counsel regarding the investigation into OPA?

RESPONSE: I believe that the most comprehensive and accurate record of the work of the AGAC would be the summaries of our monthly meetings, which I understand the Department made available in unredacted form to Committee staff for the purpose of its consideration of my record despite their pre-decisional, deliberative nature. I would note that some of the topics you have highlighted above arose in AGAC meetings, such as the lessons that United States Attorney's Offices can learn from the flawed Operation Fast and Furious.

Questions on DOJ Legal Positions and Practices

II. DOJ Refusal to Defend DOMA

- According to Attorney General Eric Holder, it is the longstanding practice of the Department of Justice to defend “the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense.” Yet, in February 2011, the Attorney General announced that the Department would no longer defend the constitutionality of Section 3 of the Defense of Marriage Act, which defined marriage under federal law as the union of one man and one woman. The Attorney General offered two reasons for this decision: (1) the Department does not consider the arguments in defense of DOMA to be “reasonable,” and (2) the President concluded that DOMA was unconstitutional.¹³

1. Do you agree or disagree with Attorney General Holder that no “reasonable” arguments could be made in defense of a law that defines marriage as limited to the union of one man and one woman? If you agree with his position, please provide a detailed explanation as to why.

RESPONSE: When Congress passes a law, the Department of Justice should vigorously defend the constitutionality of that law. That is a vitally important principle and a longstanding tradition of the Department of Justice, which affords appropriate respect to Congress as a co-equal branch of government, and I fully subscribe to it. There are limited exceptions to that rule, however, and I understand that the Attorney General, in a February 23, 2011, letter to Speaker Boehner, concluded that, under the Equal Protection component of the Due Process Clause, discrimination based on sexual orientation is reviewed under heightened scrutiny standard of review, and based on that conclusion determined that there were not reasonable arguments to be made in defense of Section 3 of the Defense of Marriage Act. The Supreme Court has now invalidated Section 3 of DOMA.

2. Do you agree or disagree with the Attorney General’s decision to not defend DOMA?¹⁴ If you agree with his decision, please provide a detailed explanation as to why.

RESPONSE: When Congress passes a law, the Department of Justice should vigorously defend the constitutionality of that law. That is a vitally important principle and a longstanding tradition of the Department of Justice, which affords appropriate respect to Congress as a co-equal branch of government, and I fully subscribe to it. As I have stated elsewhere, however, there are limited exceptions to this rule. With respect to DOMA, the Supreme Court has now invalidated Section

3. Do you agree or disagree with Attorney General Holder that the President can refuse to defend a law in court that the President believes is unconstitutional? If you agree with his position, please provide a detailed explanation as to why.

RESPONSE: When Congress passes a law, the Department of Justice should vigorously defend the constitutionality of that law. That is a vitally important principle and a longstanding tradition of the Department of Justice, which affords appropriate respect to Congress as a co-equal branch

¹³ Press Release, *Statement of the Attorney General on Litigation Involving the Defense of Marriage Act*, Dept. of Justice (Feb. 23, 2011).

¹⁴ *United States v. Windsor*, 133 S. Ct. 2675 (2013) (Slip op. at 12, 6 n.2.).

of government, and I fully subscribe to it. There are only two exceptions. The first is where a statute violates the separation of powers by infringing on the President's constitutional authority. The second is where there are no reasonable arguments that can be offered in defense of a statute. These exceptions are narrow, and they should be invoked only after the most careful deliberation.

Questions on DOJ Legal Positions and Practices

III. DOJ Refusal to Enforce Federal Marijuana Laws

- The Obama Administration arguably refuses to fully enforce federal drug laws with respect to marijuana, which is still listed as a Schedule I controlled substance in accordance with the Controlled Substance Act. Marijuana continues to be listed under Schedule I because it has long been considered by federal law enforcement and medical authorities to be both dangerous and without medicinal value.

1. **Do you agree or disagree with the federal position that marijuana is a dangerous controlled substance? If you disagree with the federal position, please provide a detailed explanation as to why.**

RESPONSE: As I stated in my testimony before the Committee, I do not support the legalization of marijuana. It is the Administration's position to oppose the legalization of marijuana and other drugs because legalization would increase the availability and use of illicit drugs, and pose significant health and safety risks to all Americans, particularly young people.

2. **Do you agree or disagree with the federal position that marijuana has no medicinal value? If you disagree with the federal position, please provide a detailed explanation as to why.**

RESPONSE: Marijuana is a Schedule I controlled substance with no currently accepted medical use in the United States. The potential for medicinal uses of marijuana and its components is the subject of ongoing research, and such research is appropriately assessed and evaluated by the Department of Health and Human Services within the statutory framework of the Controlled Substances Act as I understand has occurred in the past, as recently as 2011, in the consideration of petitions to reschedule marijuana.

3. **Do you agree or disagree with the statement that states that have legalized marijuana for recreational use have done so in violation of federal law? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: The manufacture and distribution of marijuana is prohibited by federal law, specifically, the Controlled Substances Act (CSA), except as authorized pursuant to limited exceptions within the CSA concerning research and related activities.

4. Do you agree or disagree with the statement that states that have legalized marijuana for medicinal use have done so in violation of existing federal law? **If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see response to Part III, Question 3, above.

5. Do you agree or disagree with the statement that federal prosecutors possess the prosecutorial discretion to refuse to prosecute all federal marijuana cases as a class or group? **If you agree with this statement, please provide a detailed explanation as to why.**

RESPONSE: In all areas of civil and criminal enforcement, the Department uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant public health and public safety threats. In every instance, prosecutors must make decisions about how limited resources are brought to bear to best confront those threats. The Department's policies, including in the area of marijuana enforcement, as stated in the Department's August 29, 2013 memorandum, are crafted to provide guidance on doing so in an effective, consistent and rational way, while giving prosecutors discretion within the constraints of that guidance to take into account the circumstances of each case.

6. Do you agree or disagree with the statement that federal prosecutors possess the prosecutorial discretion to refuse to prosecute federal marijuana cases where the amount of marijuana at issue falls below a certain threshold? **If you agree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see my response to Question 5, above. Rather than focus solely on quantity, the Department's 2013 memorandum provides guidance for Department employees regarding the use of the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats in an effective, consistent and rational way. In doing so, the guidance identifies eight enforcement priorities that historically have been and continue to be of primary importance in guiding the exercise of prosecutorial discretion in the area of marijuana enforcement. The guidance further acknowledges the importance of examining the particular circumstances of each case and the authority of the Department to pursue investigations and prosecutions that otherwise serve an important federal interest.

- In April 2013, the Drug Enforcement Administration (DEA) released a report¹⁵ that reaffirmed the following: (1) that marijuana remains a dangerous controlled substance,

¹⁵ U.S. Drug Enforcement Administration, *The DEA Position on Marijuana* (Apr. 2013).

and that its continued listing in Schedule I was entirely appropriate,¹⁶ and (2) that many (if not all) major American medical association, including the American Medical Association, the American Society of Addiction Medicine, the American Cancer Society, and the American Academy of Pediatrics, reaffirm the view that marijuana does not have medicinal value.¹⁷ The DEA's position on marijuana continues to be echoed by Dr. Nora Volkow, Director of the National Institutes of Health's National Institute on Drug Abuse, who is on record stating that marijuana is a harmful, non-medicinal substance.¹⁸

7. Please read the cited DEA report and, based on the material and information contained in that report, answer each of the following questions separately:
- a. Do you agree or disagree with any statement within, or portion of, the DEA April 2013 report? If you disagree with any statement within, or portion of, the DEA report, please provide a detailed explanation as to why.

RESPONSE: While I have not read the report to which you refer, as I stated in my testimony and in response to Question 1 above, I do not support the legalization of marijuana. Marijuana is a Schedule I controlled substance with no currently accepted medical use in the United States. The potential for medicinal uses of marijuana and its components is the subject of ongoing research, and such research is appropriately assessed and evaluated by the Department of Health and Human Services within the statutory framework of the Controlled Substances Act as I understand has occurred in the past, as recently as 2011, in the consideration of petitions to reschedule marijuana.

- b. Do you agree or disagree with any of the American medical associations that marijuana has no medicinal value? If you disagree with any of these American medical associations, please provide a detailed explanation as to why.

RESPONSE: While I have not reviewed the particular views stated by the American medical associations you reference, please see response to Part III, Question 2, above.

- c. Are you aware of any domestic medical associations that maintain that marijuana is either medicinal, not harmful, or otherwise beneficial to users?

RESPONSE: While I am not aware of the particular views of every American medical association, please see my response to Part III, Question 2, above.

¹⁶ *Id.* at 1 (noting that “[m]arijuana is properly categorized under Schedule I of the Controlled Substances Act,” that “[t]he clear weight of the currently available evidence supports this classification,” and that “there is a general lack of accepted safety for its use even under medical supervision”).

¹⁷ *Id.* at 2-4 (citing these and other medical associations and organizations that reject the notion that smoked marijuana has any medicinal value).

¹⁸ *e.g.*, New England Journal of Medicine, *Adverse Health Effects of Marijuana Use* (Jun. 5, 2014) (co-authored by Dr. Volkow, and discussing the short- and long-term harmful effects of smoking marijuana, which can include neurological impairment); American Psychological Association, *Marijuana addiction a growing risk as society grows more tolerant* (May 2011) (noting Volkow's comments about how smoking marijuana has the potential to interfere with cognitive development and function, particularly in developing brains).

8. Please read Dr. Volkow's cited *New England Journal of Medicine* article and, based on the material and information contained in that article, answer each of the following questions separately:
- a. Do you agree or disagree with the premise that smoked marijuana is harmful to a person's health? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: While I have not read the article to which you refer, I do not disagree with the premise that smoked marijuana is harmful to a person's health.

- b. Do you agree or disagree with Dr. Volkow's professional assessment about the potential short- and long-term effects of marijuana usage? If you disagree with Dr. Volkow's professional assessment, please provide a detailed explanation as to why.

RESPONSE: I have not read the article to which you refer, and have not personally studied the subject sufficiently to address particular short- and long-term effects of marijuana usage.

- Four states – Colorado, Washington, Oregon, and Alaska – have now legalized the cultivation, distribution, and sale of marijuana for purely recreational use, thereby creating a legalized and regulated market for the illegal controlled substance within their respective states. These states have taken these internal actions to promote marijuana, despite the fact that the cultivation, distribution, and sale of marijuana remain illegal under federal law.¹⁹ Some of these states' efforts may have at least been encouraged by the Obama Administration's recent executive declarations about new federal marijuana-related enforcement priorities.²⁰ Colorado's legalization of the cultivation, distribution, and sale of marijuana has triggered at least one lawsuit by adjacent states, which now trace current marijuana enforcement difficulties to Colorado's legalization of marijuana.²¹

¹⁹ Governing, *State Marijuana Laws Map* (Jan. 20, 2015) (identifying Colorado, Washington, Oregon, and Alaska as recreational use states).

²⁰ James M. Cole, *Guidance Regarding Marijuana Enforcement* (Aug. 29, 2013), identifying the eight following federal priorities regarding the enforcement of federal law against marijuana: (1) preventing the distribution of marijuana to minors; (2) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (3) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (4) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (5) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (7) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (8) preventing marijuana possession or use on federal property.

²¹ Denver Post, *Nebraska and Oklahoma sue Colorado over marijuana legalization* (Dec. 18, 2014) (citing the multi-state lawsuit and the interstate ramifications of intrastate legalization).

9. **Before you are confirmed to serve as the next Attorney General, what steps will you take to require these states to cease and desist their support of the cultivation, distribution, and sale of marijuana, or to otherwise bring these states into compliance with existing federal controlled substance law?**

RESPONSE: As the United States Attorney for the Eastern District of New York, I am not in a position to take the types of action to which you refer.

10. **Do you agree or disagree with the statement that state laws that affirmatively authorize the cultivation, distribution, or sale of marijuana and that attempt to regulate it are preempted by the Controlled Substances Act or other federal statutory law? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Preemption analysis is statute-specific and presents a question of whether a specific state law conflicts with a federal statutory regime. I have not personally studied the issue of preemption in the context of the particular state laws in existence sufficiently at this time to take a position with regard to any individual statutory scheme.

11. **Do you agree or disagree with the statement that federal statutory law, by virtue of the fact that it unequivocally declares marijuana to be a Schedule I controlled substance, preempts state law on the subject of marijuana, and therefore necessarily precludes states from creating a marketplace for the cultivation, distribution, and sale of marijuana under state law? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see my response to Part III, Question 10, above.

12. **Do you agree or disagree with the Obama Administration's decision to effectively suspend enforcement of the federal ban on marijuana (except with respect to certain enforcement priorities) in states that have legalized the cultivation, distribution, and sale of marijuana? If you agree with this decision, please provide a detailed explanation as to why.**

RESPONSE: Neither the Administration nor the Department of Justice has suspended enforcement of the Controlled Substances Act in states that have legalized the cultivation, distribution, or sale of marijuana. The Department's 2013 memorandum provides guidance, applicable to prosecutors in every state, regarding the use of the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats in an effective, consistent and rational way. In doing so, the guidance identifies eight enforcement priorities that historically have been and continue to be of primary importance in guiding the exercise of prosecutorial discretion in the area of marijuana enforcement. The guidance further acknowledges the importance of examining the particular circumstances of each

case and the authority of the Department to pursue investigations and prosecutions that otherwise serve an important federal interest.

13. Do you agree or disagree with the statement that it violates the Take Care Clause for the Administration to enforce marijuana laws only in states that have not legalized the use of marijuana in some way? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: Please see my response to Part III, Question 12, above.

- Reports indicate that there are arguably significant banking irregularities among Colorado's legalized marijuana-related businesses, which raise the significant possibility that these businesses may be improperly avoiding the reporting of marijuana-related revenue in order to avoid paying federal income taxes.²²

14. Before you are confirmed to serve as the next Attorney General, can you commit or not commit to dedicating the resources of the Department of Justice to investigating the degree to which these Colorado-based marijuana-related businesses may be avoiding the payment of federal income taxes? If you will not commit to investigating the tax compliance of these businesses, please provide a detailed explanation as to why.

RESPONSE: As the United States Attorney for the Eastern District of New York, I am not currently privy to information about the tax compliance of businesses in Colorado, but I understand that pursuant to the Department's February 14, 2014 guidance, investigations and prosecutions of offenses related to financial transactions based upon marijuana-related activity are focused on using the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats.

In all civil and criminal enforcement matters, including those involving violations of the federal tax laws, the Department of Justice uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant violations and to maximize the effect of its enforcement actions.

²² Denver Post, *IRS fines unbanked pot shops for paying federal payroll tax in cash* (Jul. 2, 2014) (noting how marijuana-based businesses are frequently unable to use legitimate banks because of the illicit nature of their business).

Questions on DOJ Legal Positions and Practices**IV. DOJ Refusal to Appoint Special Prosecutors for IRS Matters**

- In May 2013, the Treasury Inspector General for Tax Administration (“TIGTA”) confirmed that the IRS had used inappropriate criteria to identify potential political organizations applying for tax-exempt status under Section 501(c)(4).²³ In the months since, the President Obama has publicly discussed the severity of the situation,²⁴ and Attorney General Holder has asserted an intention to launch a criminal investigation into the above IRS abuses. To date, however, there are no outward signs of an active criminal investigation; the individual appointed to lead the internal Department of Justice investigation into the IRS had contributed heavily to President Obama and the Democratic Party;²⁵ and Attorney General Holder has refused requests to appoint a special prosecutor for an investigation into IRS.²⁶
1. **Do you agree or disagree with Attorney General Holder’s decision to not appoint a special prosecutor? If you agree with his decision, please provide a detailed explanation as to why.**
 2. **Before you are confirmed to serve as the next Attorney General, will you or will you not commit to appoint a special prosecutor for the purpose of conducting an investigation into the potential criminal wrongdoing in connection with the IRS’s above documented conduct? If you will not commit to appointing a special prosecutor, please provide a detailed explanation as to why.**

RESPONSE: I believe that it is critically important that all investigations by the Department of Justice are conducted in a fair, objective, professional, and impartial manner, without regard to politics or outside influence. We must follow the facts wherever they lead, and must always make our decisions regarding any potential charges based upon the facts and the law, and nothing more. That is what I have always done as a United States Attorney, and it is what I will do if I am confirmed as Attorney General.

In the many years that I have worked at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, “[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges.” See Memorandum of The Attorney General to All Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

²³ Treasury Inspector General For Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013).

²⁴ Press Release, *Statement by the President*, White House (May 14, 2013).

²⁵ Katie Pavelich, *BREAKING: New Emails Show Lois Lerner Was in Contact With DOJ About Prosecuting Tax Exempt Groups*, TownHall (Apr. 16, 2014).

²⁶ *Letter from Principal Deputy Assistant Attorney General Peter J. Kadzik to Senator Ted Cruz* (March 10, 2014).

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

- There have also been allegations that the IRS has shared thousands of pages' worth of confidential taxpayer information with the White House.²⁷ Such sharing may have violated federal laws designed to protect the confidentiality of taxpayer information.
- 3. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to appoint a special prosecutor for the purpose of conducting an investigation into any alleged sharing of confidential taxpayer information with the White House? If you will not commit to appointing a special prosecutor, please provide a detailed explanation as to why.**

RESPONSE: Please see response to Part IV, Questions 1 and 2, above.

Questions on DOJ Legal Positions and Practices

V. Operation Fast and Furious

- On August 19, 2009, the Obama Administration created a new strategy (dubbed "Operation Fast and Furious") to ostensibly stem the flow of illegal weapons from the United States to Mexican drug cartels by putting an emphasis on identifying the trafficking networks rather than arresting straw purchasers of illegal weapons.²⁸ This, of course, required federal law enforcement to allow weapons to be illegally purchased and then trafficked. Unfortunately, the weapons were not tracked (or were not tracked successfully), which allowed many of these weapons to enter the stream of commerce

²⁷ Robert W. Wood, *In 'Lost' Trove Of IRS Emails, 2,500 May Link White House To Confidential Taxpayer Data*, *Forbes* (Nov. 27, 2014).

²⁸ Office of National Drug Control Policy, *National Southwest Border Counternarcotics Strategy Implementation Update*, White House (Jan. 7, 2010).

and trafficking and be used in the commission of crimes, including violent crimes. The full extent of the damage done by Operation Fast and Furious may never be known.

1. Do you agree or disagree that Operation Fast and Furious was effective in tracking and monitoring how Mexican drug cartels obtain firearms? If you agree with this statement, please provide a detailed explanation as to why.

RESPONSE: In my position as a United States Attorney, I was not personally involved in either the underlying investigation of Operation Fast and Furious, or the Department's responses to Congress regarding it. I share the perspective of many, including the Department of Justice's Inspector General and Attorney General Holder, that this was a flawed operation.

2. Do you agree or disagree that operations of this kind pose inherent risks to the safety and security of not only the American public, but also to American federal, state, and local law enforcement?

RESPONSE: As noted previously, I share the perspective of many, including the Department of Justice's Inspector General and Attorney General Holder, that this was a flawed operation.

- The House of Representatives has tried for years to acquire information from the Department of Justice about Operation Fast and Furious. The Department's refusal to provide that information²⁹ on grounds of executive privilege led to the U.S. House of Representatives holding Attorney General Holder in contempt of Congress in 2012. This represented the first time in U.S. history that an Attorney General was held in contempt of Congress.³⁰ Because the Department refused to enforce the contempt citation, the Committee on Oversight and Government Reform (OGR) filed suit in federal district court. The court ordered the Department to begin producing documents by November 3, 2014.³¹ Approximately 64,000 pages of documents were finally produced, although the Department continues to assert privilege over others.³²

3. Please provide your legal understanding of the origins, nature, and purpose of the doctrine of executive privilege.

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to study the doctrine of Executive Privilege, but my understanding is that the doctrine is constitutionally-based. To preserve and protect the Executive Branch's proper functioning under the Constitution, some materials need to remain confidential. In some

²⁹ Deputy Attorney General James Cole, *Letter to Chairman Issa*, Department of Justice (Jun. 20, 2012).

³⁰ Alan Silverleib, *House Holds Holder in Contempt*, CNN (Jun. 29, 2012).

³¹ Josh Gerstein, *Judge won't allow Holder appeal now in contempt case*, Politico, Nov. 18, 2013; Jennifer Koons, *In Loss for Department of Justice, Judge Rules Fast and Furious Lawsuit Can Proceed*, MainJustice.com (Sept. 30, 2013).

³² Susan Ferrechio, *Department of Justice Dumps 64,000 Pages Related to Fast and Furious*, Washington Times (Nov. 4, 2014).

instances, it becomes necessary for the President to assert Executive Privilege in order to preserve the separation of powers.

- 4. Do you agree or disagree that the doctrine was designed only to protect the confidentiality of a president's inner circle of advisors, rather than to provide a general right of the President's cabinet officers to withhold information from the public? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: As stated above, I have not had occasion as the United States Attorney for the Eastern District of New York to study the doctrine of Executive Privilege, but my understanding is that the doctrine is constitutionally-based. I also understand that the scope of the privilege is the subject of ongoing litigation, and that the Department of Justice has taken the position that Executive Privilege is necessary to protect the President's broad Article II functions, a position accepted by the district court.

- 5. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to turning over to both chambers of Congress any and all remaining documents that Attorney General Holder has refused to provide during the prior congressional investigations into Operation Fast and Furious? If you will not commit to turning over any and all remaining Operation Fast and Furious documents, please provide a detailed explanation as to why.**

RESPONSE: If confirmed as Attorney General, I will commit to being open to a negotiated resolution of the dispute that balances the legislative need for the documents at issue with the important Executive and constitutional interests at stake.

- 6. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to preserving the entire amount of Operation Fast and Furious documents in the possession of the Department of Justice, in order to permit a subsequent Administration or federal court the opportunity to review those documents? If you will not commit to preserving unreleased Operation Fast and Furious documents for future review, please provide a detailed explanation as to why.**

RESPONSE: If confirmed as Attorney General, I will commit to ensuring that the Department complies with its preservation obligations.

Questions on DOJ Legal Positions and Practices

VI. DOJ Interference with Freedom of the Press

- Under Attorney General Holder, the Department of Justice obtained warrants to search the phone records of the Associated Press³³ and the personal e-mail account of Fox News Chief Washington Correspondent James Rosen³⁴ in connection with stories that they published containing classified information, all without informing the target of the search. In testimony before the House Judiciary Committee, Federal Bureau of Investigation Director Robert Mueller testified that investigations of “criminal co-conspirators,” as Rosen was labeled in the search warrant under which the surveillance was conducted, were used “quite often” without anticipating prosecution.³⁵
1. **Do you agree or disagree that it is inappropriate for the Department of Justice to label a journalist as a “criminal co-conspirator” and then routinely conduct surveillance of that person without seeking to prosecute him or her, when there is no evidence that the journalist is doing anything other than engaging in well-accepted journalistic practices? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Because my Office was not involved in the investigations described above, I cannot address those specific matters. Given the essential role that members of the news media play in our society, I believe that federal investigators and prosecutors should view the use of certain law enforcement tools to obtain information from, or records of, non-consenting members of the news media as an extraordinary measure, not a standard investigatory practice. If confirmed as Attorney General, I would give careful consideration to, and closely scrutinize, any request for authorization to obtain information from, or records of, a member of the news media; or to investigate or prosecute a member of the news media. In my view, the revised media policies and practices both provide an appropriate framework with which to conduct this critical analysis, and strike the appropriate balance between law enforcement and free press interests.

Questions on DOJ Legal Positions and Practices

VII. DOJ Foreign Corrupt Practices Act Abuses

- In much the same way as civil forfeiture, critics of the FCPA note that the Department of Justice collects and retains for use (without further congressional approval or disbursement from the Treasury) fines paid in settlement of federal FCPA investigations. This ability to retain FCPA fines incentivizes not only a vigorous application of the FCPA, but also “creative” legal theories (which can lead to investigations of companies for potentially innocuous behavior). Critics of the FCPA, and the Department’s pursuit of FCPA investigations, point out that the combination of investigation and potential litigation expenses frequently drive what may be innocent companies to settle, which both cements the revenue source for the Department and prevents federal judges from having opportunities to interpret provisions of the FCPA.

³³ Mark Sherman, *Gov’t Obtains Wide AP Phone Records In Probe*, Associated Press (May 13, 2013).

³⁴ Ann E. Marimow, *A rare peek into a Department of Justice leak probe*, Washington Post (May 19, 2013).

³⁵ FBI Oversight Hearing Before the H. Comm. on the Judiciary, 113 Cong. (2013) (Statement of Dir. Mueller, Chairman).

- 1. Do you agree or disagree with the claim that the ability of the Department of Justice to keep and use FCPA settlement fines incentivizes application of the FCPA? If you disagree with this claim, please provide a detailed explanation as to why.**

RESPONSE: I disagree with this claim, which I believe is built on a faulty premise regarding the process by which criminal fines and other financial penalties are paid and subsequently put to use. Fines for FCPA violations are not “kept” or “used” by the Department, and no such use incentivizes application of the FCPA. Rather, as with all cases, the Department considers the strength of the evidence and other long-standing policy considerations (*see, e.g.*, United States Attorney’s Manual (USAM) 9-28.300) in determining whether to bring an FCPA prosecution.

A company convicted of an FCPA violation pays any accompanying fine not to the Department but to the relevant U.S. district court clerk’s office. Those funds are then directed to the Crime Victim Fund, which is a U.S. Treasury fund created pursuant to Title 42, United States Code, Section 10601. Funds paid into the U.S. Treasury are not available for use by the Department except through the appropriations process or by statute.

A company that settles an FCPA investigation through a non-prosecution or deferred prosecution agreement pays any accompanying financial penalty not to the Department but to the U.S. Treasury. Pursuant to Congressional authorization and strict Departmental oversight, a small percentage of these funds may be made available to the Department. More specifically, in 1993 Congress authorized the creation of a 3% working capital fund (“3% Fund”) for the Department. *See* Public Law 113-234, 28 C.F.R. Section 527. Three percent of penalties associated with certain financial recoveries, including through non-prosecution and deferred prosecution agreements, are paid into the 3% working capital fund. After rigorous review by the Collection Resources Allocation Board, overseen by the Justice Management Division, the Department may award funds from the 3% Fund to support certain litigation, data administration, and personnel costs.

- 2. Has your office actually tried any FCPA cases to a verdict in federal court? If the answer is yes, please provide details about these cases.**

RESPONSE: The Eastern District of New York has participated in a number of significant FCPA investigations with the Fraud Section of the Criminal Division of the Department, and it continues to do so. To date, these investigations have resulted in two corporate resolutions: (1) In re Ralph Lauren, NPA, \$882,000 penalty, press release at: <http://www.justice.gov/opa/pr/ralph-lauren-corporation-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay>; and (2) In re Comverse Technology, Inc., NPA, \$1.2 million penalty, press release: <http://www.justice.gov/opa/pr/comverse-technology-inc-agrees-pay-12-million-penalty-resolve-violations-foreign-corrupt>); and one guilty plea by Garth Peterson of Morgan Stanley (and a declination against Morgan Stanley) (press release: <http://www.justice.gov/opa/pr/former-morgan-stanley-managing-director-pleads-guilty-role-evading-internal-controls-required>). While the Department has conducted FCPA trials in many

districts, the United States Attorney's Office for the Eastern District of New York has not had an FCPA trial to date.

- As you know, the Criminal Division's Fraud Section is charged with investigating and enforcing the criminal provisions of the FCPA. Recently, Andrew Weissmann was selected to be the Chief of the Fraud Section. Mr. Weissmann is a former prosecutor and FBI general counsel. In private practice, however, Mr. Weissmann has been an outspoken critic of DOJ's FCPA program. Specifically, in a report³⁶ Mr. Weissmann drafted for the U.S. Chamber of Commerce's Institute for Legal Reform, he has recommended that: (1) a compliance defense to the FCPA should be added; (2) a company's liability should be limited for the prior actions of a company it has acquired; (3) a "willfulness" element should be added for corporate criminal liability; (4) a company's liability should be limited for the actions of a subsidiary; and (5) the definition of "foreign official" under the FCPA should be changed.

3. Do you agree with any, some, or all of Weissmann's proposals for reforming the FCPA?

RESPONSE: It is my understanding that Mr. Weissmann made these comments while in private practice and in connection with his representation of the U.S. Chamber Institute for Legal Reform ("Chamber"). It is also my understanding that, in the intervening time period, the Department has met with the Chamber, as well as other stakeholders, to engage in a healthy and productive dialogue regarding the Department's interpretation and application of the FCPA. If confirmed as Attorney General, I would continue to foster dialogue with the Chamber and other stakeholders regarding our FCPA program.

4. Which of these changes (if any) do you think could be done administratively, as opposed to legislatively?

RESPONSE: I do not support the proposed changes. Several of them would be a significant departure from general principles of corporate criminal law, effectively creating unique exceptions for FCPA cases that are unwarranted, are contrary to Congress's intent in enacting the FCPA, and would impose often insurmountable obstacles to effective enforcement of the FCPA.

- In 2004, then-Deputy Attorney General (and current director of the Federal Bureau of Investigation) James Comey stated that "[the Department of Justice wants] real time enforcement, so that the public and potential white collar criminals see that misdeeds are swiftly punished." Despite this statement, the 2014 OECD Foreign Bribery Report noted that "the average time taken (in years) to conclude foreign bribery cases has steadily increased over time, [from an average of 1.3 years in 2004] peaking at an average of 7.3

³⁶ U.S. Chamber Institute for Legal Reform, *Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act* (Oct. 26, 2010).

years taken to conclude the 42 cases in 2013.”³⁷ Lengthy federal investigations not only place a tremendous financial burden on the targeted corporations and their shareholders, but also on taxpayers who shoulder the agency’s expenses for conducting the investigation.

- 5. Do you agree or disagree with Director Comey’s statement regarding the value of real-time law enforcement? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: I agree that law enforcement must move swiftly and responsibly in investigating both white collar and other criminal activity. I also agree that, for deterrence purposes, it is important to move quickly and bring charges against those individuals and companies that have engaged in criminal behavior.

While the Department has been working diligently to find meaningful and reasonable ways to reduce the time white collar FCPA investigations take, the question’s reliance on the OECD Foreign Bribery Report is misplaced. As I understand it, the referenced statistic is based on an aggregate of all the OECD Working Group members’ cases, rather than isolating the time taken by the United States in its cases. Also, this statistic does not measure the length of the criminal investigation. Rather, it measures the time between the last criminal act and the sanction, increasing substantially the time measured, since the Department (or foreign law enforcement) might not learn about a potential violation until years after the last criminal act has occurred.

- 6. Given that the FCPA Unit within the Department’s Fraud Section has expanded its personnel from 2004 to today, and given that the Department receives even more international cooperation today than it did in 2004, do you agree or disagree that the Department should be witnessing reduced investigative timelines for FCPA investigations rather than increased timelines? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Additional resources and cooperation are greatly appreciated and can often be key factors in expediting criminal investigations. However, they are only two of many factors that can influence the time it takes to conduct a successful investigation of any kind. Compared to other white collar investigations, the challenges associated with FCPA investigations can be much greater. Because of the nature of the offense, most of the evidence in these cases is typically located overseas. While international cooperation efforts have expanded significantly over the past ten years, the process for obtaining evidence from overseas is still time-consuming.

- 7. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to dramatically reducing the timeline of FCPA-related Fraud Unit investigations, in order to reduce the financial burden on potentially innocent corporations and reduce investigation-related taxpayer expenses? If**

³⁷ Organization for Economic Cooperation and Development, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* (Dec. 2, 2014).

you will not commit to reducing these investigative timelines, please provide a detailed explanation as to why.

RESPONSE: Under my leadership, the Eastern District of New York has been committed to increasing the speed of its white collar investigations, including its FCPA investigations. As a result of the particular challenges of corporate and overseas investigations, however, the investigations can take a significant amount of time. While improvements in this area can be made, irresponsibly or artificially expediting an investigation solely for the sake of speed can harm the investigation and the pursuit of justice, as well as create greater harms to the targets, subjects, and witnesses in our investigations. If I am confirmed as Attorney General, you can be assured that the Department will continue to review each case on its merits and will move as expeditiously and responsibly as possible.

- Often, many of the countries with corrupt officials are the same countries that harbor terrorists, that seek to undermine U.S. foreign policy, and that have rampant bid rigging and illegal cartel conduct. On the opposite side of the equation, there are an increasing number of countries that have passed new anti-bribery statutes in the hope of curbing their own internal corruption problems and spurring legitimate economic growth.

8. How will you marshal the criminal justice resources of the Department of Justice to enforce the FCPA in a way that helps in the fight against terrorism, cartel conduct, and international money laundering? Please provide a detailed explanation, based on your current experience as United States Attorney for the Eastern District of New York, of how you intend to tackle the problem.

RESPONSE: As the United States Attorney for the Eastern District of New York, I am well aware of the link between corruption, corrupt regimes, and transnational crime, including economic crime, human trafficking, narcotics trafficking, money laundering, and even terrorism. In addition to prosecuting foreign corruption, narcotics trafficking, money laundering, and terrorism cases, the Department works closely with its counterparts throughout the U.S. government to devise and implement robust anticorruption strategies. For example, my Office has worked closely with the intelligence community on terrorism and corruption-related matters. The Department further participates, along with colleagues in other agencies in the U.S. government, in developing anticorruption policies through various international organizations and anticorruption conventions, including the Organization for Economic Cooperation and Development's Working Group on Bribery, the G-7, the G-20, and the U.N. Convention Against Corruption. The Department also consults with civil society organizations involved in the battle against corruption.

If confirmed as the Attorney General, I would continue to ensure that fighting corruption overseas, as well as domestically, remains a top priority for the Department. I would ensure that resources are appropriately directed to enforcing U.S. laws targeting foreign corruption, recovery of assets stolen by kleptocrats, and corrupt regimes.

9. **Given that more and more countries are enacting and enforcing anti-bribery statutes, would you agree or disagree that the FCPA ought to be amended to restrict FCPA jurisdiction to countries that do not have a prima facie anti-corruption infrastructure? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Such an exception would be unique under federal law. I disagree with this approach, as I believe it would do harm to the Department's anticorruption efforts. The Department works closely with countries that are developing their own anticorruption infrastructures, and we are well aware that it can take years of persistent effort to create an effective and holistic response to corruption of domestic and foreign officials.

As a recent OECD Report on Foreign Bribery noted, enforcement of existing anticorruption statutes, particularly those targeting foreign bribery, is improving but has a long way to go to see consistent and effective enforcement even among top economies in the world.

- The Department of Justice generally emphasizes the benefit of voluntary self-disclosure to, and voluntary cooperation with, FCPA investigations. Corporations are increasingly questioning the benefit, however, of rushing toward self-disclosure without demonstration of some sort of legal or cost benefit for doing so. To address this, some practitioners have suggested that the FCPA should contain a "safe harbor" from criminal prosecution for corporations that (1) have robust compliance programs, (2) self-disclose potential FCPA violations, and (3) cooperate fully with the Department's investigation, akin to what the Antitrust Division has for cartel enforcement.³⁸ (The Department would, of course, be able to continue to obtain non-criminal penalties for violations.)

10. **Do you agree or disagree with the statement that there should be an FCPA "safe harbor provision" to help corporations that are trying to do the right thing? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: I do not believe a "safe harbor provision" is necessary or desirable. Both the U.S. Sentencing Guidelines and the Department of Justice already provide significant benefits for companies that have robust compliance programs, self-disclose potential FCPA violations, and cooperate fully with the Department's investigation. Indeed, in a recent FCPA matter, the Criminal Division and the Eastern District of New York declined to prosecute Morgan Stanley based on many of those factors, among others, despite the fact that one of its Managing Directors bribed a foreign official to obtain business for and on behalf of Morgan Stanley.

11. **If you agree with the concept of an FCPA safe harbor provision, please describe what the structure or contours of such a safe harbor provision should be, and how you would implement that provision. Please provide a detailed explanation.**

³⁸ Christopher M. Matthews, *Terwilliger to Propose New Rules for FCPA Disclosure*, Just Anti-Corruption (Jun. 22, 2010).

based on your current experience as United States Attorney for the Eastern District of New York, of how you would write and implement such a provision.

RESPONSE: The factors outlined in your question are important considerations in all FCPA cases, but I do not believe that a “safe harbor provision” is necessary or desirable.

- Members of the business community, practitioners, commentators, and even members of Congress have expressed frustration with the Department of Justice’s failure to publicize declined FCPA prosecutions, even where there is public knowledge that a particular corporation is under investigation. This practice may have several negative effects, including preventing corporations from having clarity about what type of conduct is considered acceptable. Given the Department’s financial incentive to ensure robust application of the FCPA, there is concern that this refusal to publish decline-to-prosecute information is intended to protect the FCPA fine-based revenue source for the Department.

12. Would you agree or disagree with the statement that FCPA decline-to-prosecute decisions should be made available to the public? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: I agree that the Department should continue to explore ways by which it can responsibly share information while protecting the many sensitive interests that federal, criminal investigations implicate. The Department has a longstanding general practice of refraining from discussing non-public information on matters it has declined to prosecute. This practice is designed to protect ongoing investigations, privacy rights and other interests of uncharged parties, and sensitive, internal law enforcement deliberations. This practice and these considerations apply across the enforcement of all federal criminal laws.

Nevertheless, I must emphasize that the Department does pursue means by which declinations and other information about the decision to prosecute can be responsibly shared with entities or individuals under investigation, the business community, practitioners, commentators, and members of Congress. The United States Attorney’s Manual (USAM) describes situations in which a United States Attorney can exercise discretion to provide notice that an investigation is being closed. *See* USAM § 9-11.155.

Further, in the last two years, the Department has made great efforts to provide more information and transparency in the area of the FCPA, including the publication of A Resource Guide to the U.S. Foreign Corrupt Practices Act (the “Resource Guide”). The Resource Guide, which was written by the Department and the U.S. Securities and Exchange Commission (SEC), provides the public with extensive information about the Department’s FCPA enforcement approach and priorities. It contains a section on declinations and sets out criteria prosecutors consider in declining to bring a prosecution under the FCPA. In addition, the Department responds to opinion requests concerning its enforcement intent about actions that may be perceived as violating the anti-bribery provisions of the FCPA. *See* Title 15, United States Code, Sections 78dd-1(e) and 78dd-2(f). These opinion letters provide significant additional insight into the

Department's enforcement views, as well as transparency for companies, individuals, and practitioners as to what is acceptable or not.

13. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to publishing information about the FCPA cases that the Department has decided not to pursue or prosecute? If you will not commit to publishing this information, please provide a detailed explanation as to why.

RESPONSE: I will commit to continuing the Department's practice of actively pursuing and implementing means by which declinations and other information about the decision to prosecute, or not, can be responsibly and appropriately shared. As detailed in my answer to the preceding question, the United States Attorney's Manual already provides a mechanism to provide notice that an investigation is being closed. I also commit to continuing the Department's recent efforts to provide more information and transparency, as it did by publishing the Resource Guide.

Questions on DOJ Legal Positions and Practices

VIII. DOJ Civil Asset Forfeiture Abuses

- There has been recent congressional concern about the Department of Justice's use of civil asset forfeiture, which has historically allowed federal prosecutors to seize cash and property from an individual before that individual is charged with a crime (and, in many circumstances, in the absence of any criminal charges or due process hearings).³⁹ It is also our understanding that you have been an aggressive user of civil asset forfeiture as United States Attorney for the Eastern District of New York, with your office receiving more than \$113 million in civil forfeiture proceeds from 123 cases between 2011 and 2013.⁴⁰

1. Please confirm the above number of civil asset forfeiture actions and the sum of civil asset forfeiture revenue taken in by your office during your recent tenure as United States Attorney (and, if these figures are incorrect, please provide the correct or updated figures).

RESPONSE: During the period between May 1, 2010 and January 21, 2015, my Office filed approximately 196 civil asset forfeiture cases. While some of those cases remain pending, the completed cases resulted in the forfeiture of approximately \$95 million in civil forfeiture proceeds.

³⁹ *Loretta Lynch's Money Pot*, Wall Street Journal (Nov. 21, 2014).

⁴⁰ *Id.*

- 2. Of the total number of civil asset forfeiture actions that have occurred in the Eastern District of New York during your recent tenure as United States Attorney, how many of those actions resulted in formal criminal charges:**
- a. against the person from whom the assets were originally seized?**
 - b. against another person (such as an accomplice in criminal activity)?**

RESPONSE: The Department of Justice does not maintain statistical information that would enable my Office to respond to this request. The Department's system for tracking and monitoring forfeiture matters is an asset tracking system, not a case tracking system. As such, the system contains only limited information on criminal cases that include forfeiture allegations for specific assets. Data is not recorded for every criminal case that may have been brought against a person involved in a civil asset forfeiture matter. Accordingly, it is not possible to provide accurate statistics regarding the number of criminal cases that were brought against a person involved in a civil asset forfeiture matter.

Nevertheless, I am aware of recent cases in which my Office has achieved great success through civil forfeiture actions against assets either in the absence of criminal charges or where assets cannot be forfeited in connection with a criminal case. In these cases, civil asset forfeiture functioned as an important tool—and in some instances, the only tool—for taking the profit out of crime and preserving the availability of assets for return to crime victims.

For example, in *United States v. All Funds on Deposit at Citigroup Smith Barney, et al.*, Kobi Alexander, a criminal defendant and former CEO of Comverse Technology, Inc. ("Comverse"), forfeited over \$46 million to the United States. The civil forfeiture action that led to this recovery was filed after Alexander fought extradition to the United States from Namibia in connection with pending charges of conspiracy, mail, wire and securities fraud and other offenses stemming from his scheme to backdate employee option grants. After defeating a number of challenges to the forfeiture by Alexander and his wife, the government entered into an agreement in which Alexander agreed to forfeit the seized funds in order to return the forfeited funds to Comverse, the victim of the charged crimes. In turn, Comverse agreed to use the monies to settle shareholder litigation arising from the backdating scandal. Because Alexander was out of the country and would not return to the United States, the remission of this money to victims could not have been achieved through criminal forfeiture, which requires a criminal conviction.

Similarly, in *United States v. Tai*, my Office used civil forfeiture to recover proceeds of crime where, again, a conviction could not be obtained. In that case, Tai passed away before his trial. By commencing a civil forfeiture action, the government was able to preserve approximately \$7 million in assets that represented proceeds of health care fraud, and which are now available for return to Medicare, Medicaid and private insurance company victims. Due to the Tai's untimely death, there could be no criminal conviction, and this result could not have been achieved through criminal forfeiture.

My Office also achieved the preservation of tens of millions of dollars in tainted assets through the use of civil forfeiture in connection with the prosecution of defendants Brian Callahan and Adam Manson. In the related criminal case, both defendants pled guilty to securities and wire fraud in connection with a large Ponzi scheme, misappropriating approximately \$96 million from their victims. Callahan diverted millions of the fraudulently-obtained funds to defendant

Manson's real estate project, a 117-unit beachfront luxury resort and resident development in Montauk known as the Panoramic View. Before the criminal investigation began, in April 2012, my Office initiated a civil forfeiture action against Callahan's residence and the unsold units of the Panoramic View, which is worth at least approximately \$60 million. Fifteen months later, in July 2013, the grand jury returned a criminal indictment. The filing of the civil forfeiture action served to restrain and prevent the dissipation of valuable assets while the criminal investigation was pending, thereby preserving property for potential return to victims of the defendants' scheme. If the property instead was sought to be forfeited through criminal forfeiture, it would have been at risk of being sold or otherwise dissipated prior to the grand jury's indictment.

- On Friday, January 16, 2015, Attorney General Holder issued an order restricting the practice whereby the federal government "adopts" state and local law enforcement seizures of property that might otherwise violate state civil asset forfeiture laws. Under the stated policy, this practice would be limited to state and local seizures of only "firearms, ammunition, explosives, and property associated with child pornography."⁴¹ While the order appears to be a step in the right direction, it also appears to be very limited in scope. For one, the order does not restrict in any way the federal government's ability to engage in unlimited civil asset forfeiture. Nor does it restrict any joint federal-state civil asset forfeiture.

3. Do you agree or disagree that the federal government's ability to engage in civil asset forfeiture presents due process concerns? If you disagree, please provide a detailed explanation as to why.

RESPONSE: Asset forfeiture is a critical law enforcement tool intended to deprive criminals of the proceeds and instrumentalities of their crime and to compensate victims of crime. The civil asset forfeiture regime includes extensive safeguards to protect due process and property rights. Because civil asset forfeiture is a proceeding against property and not against an individual, it does not require an accompanying criminal conviction. Rather, the government must prove by a preponderance of the evidence that the property at issue is linked to criminal activity. Civil forfeiture law further provides protection for any innocent owner of property who is unaware of its link to criminal activity. As a result of civil forfeiture, the Department has been able to return billions of dollars to the victims of crime.

4. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to reducing the Department of Justice's use of civil asset forfeiture in the absence of formal criminal charges? If you will not commit to reducing civil asset forfeiture in the absence of formal criminal charges, please provide a detailed explanation as to why.

RESPONSE: Please see response to VIII, Question 3, above.

⁴¹ Eric Holder, *Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies*, Department of Justice (Jan. 16, 2015).

- Critics of civil asset forfeiture have highlighted the Department of Justice's ability under current law to collect in an offsetting account and use (without further congressional approval or disbursal from the Treasury) revenue derived from civil asset forfeiture proceeds for Department activities. Because the Department has the freedom to keep and use this revenue without additional steps, critics maintain that the Department has every incentive to continue, and even expand, its use of civil asset forfeiture (and, for all intents and purposes, can self-fund certain agency functions, outside of the normal appropriations framework). One proposed solution for eliminating the incentive to engage in civil asset forfeiture is to change federal law to require that any proceeds collected as a result of civil asset forfeiture be deposited directly into the general fund of the Treasury.
5. **Do you agree or disagree that the Department's ability to keep and use proceeds from civil asset forfeitures incentivizes the Department's use of civil asset forfeiture? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Federally forfeited assets are deposited into the Assets Forfeiture Fund. These funds are in turn used to compensate victims of crime, pay administrative costs, and provide critical resources to state and local law enforcement. The Department has extensive procedures in place to ensure that forfeited assets are used appropriately, including a prohibition that they be used to fund employee salaries. As a result of forfeiture, the Department has been able to return billions of dollars to the victims of crime. If forfeited assets were deposited into the General Treasury instead of the Assets Forfeiture Fund, they would no longer be available for victims of crime.

6. **Do you agree or disagree that it would be more appropriate for the Department's proceeds from civil asset forfeiture to be deposited directly into the general fund of the Treasury? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see response to VIII (5) above.

- Frequent deposits beneath the \$10,000 threshold can trigger federal scrutiny on suspicion the depositors are seeking to evade federal oversight for crimes like money laundering or drug trafficking. On occasion, such deposits are seized using the Department of Justice's civil asset forfeiture capacity. Frequent, small deposits, however, are a common habit of legitimate small businesses, which rely on small injections of revenue and adequate account levels to ensure smooth bill payment and operations.
7. **Do you agree or disagree that the Department should exercise greater care when it attempts to seize bank accounts of individuals and entities that could be sole proprietors or legitimate small businesses? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: The structuring laws enacted by Congress are intended to prevent individuals from structuring financial transactions to avoid reporting requirements under the Bank Secrecy Act. Frequently, structured cash deposits are designed to conceal crimes such as narcotics offenses, money laundering and tax evasion. The currency reporting requirements have been an effective tool in assisting law enforcement in its detection of such criminal conduct. Structuring deprives law enforcement of this critical information, which is why Congress made it a criminal offense.

- 8. Do you agree or disagree that there should be a “loser pays” policy in which the federal government would pay for the legal expenses of individuals whose property is ultimately determined by a federal court to have been seized inappropriately (or if there is some other demonstrable failure of due process)? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: With respect to a “loser pays” policy, I understand that the law currently provides that a prevailing claimant in a civil forfeiture proceeding is entitled to have their attorneys’ fees paid by the government.

Questions on National Security Issues

I. Obama Administration’s Criminal Justice Approach to Terrorism

- The Department of Justice recently announced the prosecution of two separate cases in the Eastern District of New York involving attacks by terrorists on U.S. troops in overseas theaters of operation.

The first case, announced on January 20, 2015, charged two Yemeni nationals who are members of al Qaeda, Saddiq Al-Abadi and Ali Alvi, with conspiring to murder U.S. nationals abroad and providing material support to al Qaeda. The complaint alleges that the two men engaged in attacks against U.S. forces in Afghanistan, in which an Army Ranger was killed and several others were seriously wounded. One of the defendants also engaged in attacks against U.S. forces in Iraq. The complaint states that the alleged conduct occurred between 2003 and 2008. The defendants were arrested in Saudi Arabia and then extradited to the United States.⁴²

The second case, announced on January 23, 2015, charged the defendant Faruq Khalil Muhammed ‘Isa, who is identified as a member of a multinational terrorist network, with conspiring to kill U.S. nationals abroad and providing material support to a terrorist conspiracy to kill U.S. nationals abroad. The complaint alleges that the defendant

⁴² Press Release, *Two Yemeni Nationals Charged with Conspiring to Murder United States Nationals Abroad and Providing Material Support to al Qaeda*, U.S. Department of Justice (Jan. 20, 2015).

assisted in orchestrating a suicide attack that killed five U.S. soldiers. The defendant was extradited from Canada.⁴³

- 1. Do you agree or disagree with the Obama Administration's decision to bring to the United States terrorist fighters who engaged in combat against our troops overseas and to try them as civilian criminals entitled to all the procedural protections of our criminal justice system? If you agree with this decision, please provide a detailed explanation as to why.**

RESPONSE: I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In any particular case, representatives of the agencies who are tasked with protecting the American people, including the Department of Defense, the Department of Homeland Security, the Department of Justice and agencies in the Intelligence Community, work together to determine the most effective tools to apply in that case, based on the particular facts and applicable law. As the United States Attorney for the Eastern District of New York, my role to date has been limited to determining whether or not there was a prosecutable federal case, not which was the appropriate tool to employ.

Because the cases to which you refer are ongoing prosecutions, I cannot comment on the specific facts or decision-making processes in those matters, other than to indicate that the process described above was observed.

- 2. Do you agree or disagree that these fighters should be treated as unlawful enemy combatants subject to indefinite detention and trial by military commission for violations of the laws of war? If you disagree with this decision, please provide a detailed explanation as to why.**

RESPONSE: Please see response to Question 1, above.

- 3. Are you concerned that by bringing terrorists to the United States for trial, Administration policy might draw terrorists here and expose the public to danger?**

RESPONSE: Although I cannot comment on these particular ongoing cases, I can say that appropriate steps have always been taken to ensure the security of terrorism-related proceedings in my district, as well as to ensure that terrorists detained in our prisons are held securely and do not pose a threat to our citizens. From my firsthand experience as a United States Attorney, I can attest that the criminal justice system has proven in hundreds of terrorism cases since before 9/11 to be a swift, secure, and effective option, among others, to incapacitate terrorists, gain valuable intelligence, and ensure that justice is served. While we must remain vigilant to the persistent

⁴³ Press Release, *Alleged Terrorist, Charged With Murder of Five American Soldiers, Extradited to United States*, U.S. Department of Justice (Jan. 23, 2015).

risk of terrorist attacks and use all lawful tools of national power, I am confident that we can continue to prosecute terrorists in our courts and detain them in our prisons safely and securely.

Questions on National Security Issues

II. Obama Administration's Guantanamo Bay Detention Facility Policy

- It has been reported that, of the 620 detainees released from U.S. military's Guantanamo Bay Detention Facility (GTMO), at least 180 of these detainees have returned (or are suspected of having returned) to the battlefield to fight against U.S. forces and allies. According to U.S. officials, of those 180 confirmed or suspected recidivists, 20 to 30 have either joined ISIS or other militant groups in Syria.⁴⁴ There are now only 122 detainees at GTMO.⁴⁵

1. Do you agree or disagree with the President's decision to close GTMO? If you agree, please provide a detailed explanation as to why.

RESPONSE: I support the President's policy. Although it is generally lawful to detain enemy combatants consistent with the laws of war for the duration of a conflict, I am concerned about the adverse effect of Guantanamo on our national security interests and cooperation with our allies, as identified by the President and the Department of Defense. As a United States Attorney, I am aware of concerns Guantanamo raises in the context of trying to secure the cooperation of foreign governments in terrorism cases.

2. If you agree, please provide your view on what to do with the remaining 122 detainees.

RESPONSE: The President has made clear that we will not transfer anyone from Guantanamo unless the threat the detainee may pose has been sufficiently mitigated and the transfer would be consistent with national security and our humane treatment policy. It is my understanding that each Guantanamo detainee has been evaluated based on a thorough interagency process, that 54 detainees have been approved for transfer unanimously by relevant Departments and Agencies, and that reviews for certain categories of detainees not currently approved for transfer are continuing by Periodic Review Boards according to criteria set forth in an executive order and statute. I support efforts to ensure that detainees are thoroughly evaluated to assess any threat they may pose and to transfer them to other countries only after satisfying the criteria for transfers established by law. Other detainees at Guantanamo are being prosecuted in military commissions, and I fully support that process.

⁴⁴ Justin Fishel & Jenner Griffin, *Sources: Former Guantanamo detainees suspected of joining ISIS, other groups in Syria*, Fox News (Oct. 30, 2014).

⁴⁵ Fact Sheet, *Guantanamo by the Numbers*, Human Rights First (Jan. 15, 2015). Of the 242 detainees at the start of the Obama presidency, 116 have been transferred, repatriated, or resettled. *Id.*

3. Is it illegal for the United States government to detain terrorists indefinitely at GTMO?

RESPONSE: It is lawful for the United States to detain enemy combatants at Guantanamo for the duration of the conflict, consistent with the 2001 AUMF as informed by the law of war, and subject to review of their detention by the courts.

4. Is it illegal for the United States government to detain terrorists indefinitely at any other facility?

RESPONSE: The location of a particular detention facility would not alter the government's detention authority, although the laws of war would inform in what circumstances such individuals could be detained.

5. Do you or do you not have concerns about what seems to be the Obama Administration's policy of transferring GTMO detainees to other governments' custody, regardless of whether these governments are willing or able to demonstrate their intent or capacity to continue to detain the transferred individuals?

RESPONSE: The President has made clear that we will not transfer anyone from Guantanamo unless the threat the detainee may pose has been sufficiently mitigated and the transfer would be consistent with national security and our humane treatment policy. It is my understanding that the security measures provided by the receiving country are thoroughly evaluated before any transfer decision is made. If I am confirmed as Attorney General, I would support the Administration's efforts to ensure that detainees are thoroughly evaluated to assess threat they may pose and to transfer them only where we can do so consistent with our national security and with the criteria for transfers established by law.

6. If it is illegal for the United States government to detain terrorists indefinitely at GTMO or any other facility, why is it legal or permissible for the United States government to transfer detainees to another government for indefinite detention?

RESPONSE: I am unaware of any practice or policy to this effect.

7. Will you or will you not commit to reviewing the Administration's policy of transferring detainees to foreign governments in light of the evidence of recidivism of transferees? If you will not commit to reviewing this policy, please provide a detailed explanation as to why.

RESPONSE: The President has made clear that we will not transfer anyone from Guantanamo unless the threat the detainee may pose has been sufficiently mitigated and the transfer is

consistent with national security and our humane treatment policy, and that security measures provided by the receiving country are thoroughly evaluated before any transfer decision is made. If I am confirmed as Attorney General, I would support the Administration's efforts to ensure that detainees are thoroughly evaluated to assess any threat they may pose and to transfer them only where we can do so consistent with our national security and with the criteria for transfers established by law. It is my understanding that the most recent public report released by the Office of the Director of National Intelligence found that over 90% of the detainees transferred by the current Administration are neither confirmed nor suspected of having reengaged in terrorist or insurgent activity. Past instances of recidivism are and should be an important consideration.

Questions on National Security Issues

III. Obama Administration's U.S. Citizen Domestic Drone Strike Policy

- In February 2013, a "White Paper" from the Department of Justice was released explaining that the government has the authority to kill U.S. citizens in a foreign country, outside the area of hostilities, if they are senior operational leaders of al Qaeda, provided that certain conditions are met, including that they present an "imminent" threat.⁴⁶
 1. **Do you agree or disagree that it would violate the Due Process Clause of the United States Constitution if the President ordered the killing of a U.S. citizen on U.S. soil without judicial process if that U.S. citizen does not present an imminent (meaning immediate) threat of death or serious bodily injury to others? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: In a letter to Senator Rand Paul addressing this issue, Attorney General Eric Holder stated that the President does not have "the authority to use a weaponized drone to kill an American not engaged in combat on American soil." Although I have not had occasion in my role as a United States Attorney to consider the question in depth, I agree with Attorney General Holder's response.

- The Administration's 2013 White Paper, which applied only to targeted killings of Americans overseas, explained that an "imminent" threat "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future."⁴⁷
 2. **Do you agree or disagree with this White Paper's definition of "imminent"? If you agree, please provide a detailed explanation as to why.**

⁴⁶ Office of Legal Counsel, *Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Organizational Leader of Al Qaeda or an Associated Force*, Department of Justice.

⁴⁷ *Id.*

RESPONSE: The Administration has stated that, in the counterterrorism context, the imminence determination incorporates consideration of at least the following factors: the relevant window of opportunity to act against the individual posing the threat; the possible harm that missing that window would cause to civilians; and the likelihood of heading off future disastrous attacks against the United States. I have not had occasion in my role as a United States Attorney to consider such questions in depth, but the Administration's statement accords with my understanding that the meaning of "imminence" depends on the context and that the determination whether a threat is imminent should take into account all relevant facts and circumstances, and may be difficult to evaluate in the abstract.

Questions on Voting Rights

I. The Voting Rights Act's Preclearance Requirement

- In *Shelby County v. Holder*, 133 S. Ct. 2612 (June 25, 2013), the Supreme Court invalidated Section 4 of the Voting Rights Act, which had established the formula for determining which states and localities must obtain preclearance from the Department of Justice before implementing any changes to their respective election laws.

1. **Do you agree or disagree with the Supreme Court's holding in *Shelby County* that the Voting Rights Act formula based on social conditions in 1965 no longer accurately reflected today's social conditions? If you disagree with the Court's holding, please provide a detailed explanation as to why.**

RESPONSE: The decisions of the Supreme Court represent the law of the land. I note that the *Shelby County* case itself remains as pending litigation in which the Department is a defendant, and for that reason, I cannot comment further.

2. **Do you agree or disagree with the view that the imposition of a federal preclearance requirement for changes to a state's election laws violates the Tenth Amendment of the United States Constitution? If you disagree with this view, please provide a detailed explanation as to why.**

RESPONSE: This question relates to whether to impose a new preclearance requirement in some circumstances, and that question is at issue in various pending litigation in which the Department is participating. As a result, I cannot comment.

3. **Do you agree or disagree with the view that the preclearance requirement of the Voting Rights Act is obsolete in modern America? If you disagree with this view, please provide a detailed explanation as to why.**

RESPONSE: Because this necessarily relates to the question of whether to impose a new preclearance requirement in some circumstances, which is at issue in various pending litigation in which the Department is participating, I cannot comment.

Questions on Voting Rights

II. Voter Identification Laws and Legislation

- In November 2014 – after President Obama nominated you to serve as Attorney General – you were recorded in a video⁴⁸ speaking to an audience in Long Beach, California. You were highly critical of states’ voter identification laws. In the course of giving this speech, you made the following comments:
 - “Fifty years after the march on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for. ... People try and take over the State House and reverse the goals that have been made in voting in this country.”
 - “But I’m proud to tell you that the Department of Justice has looked at these laws, and looked at what’s happening in the Deep South, and in my home state of North Carolina [that] has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits will continue.”
 - “There’s still more work to do. People tell us the ‘dream’ is not realized because dreams never are. [Nelson] Mandela and [Martin Luther] King knew we had to continue working, and I’d be remiss if I didn’t tell you, that under this president and under this attorney general, that the Department of Justice is committed to following through with those dreams.”
 - Your comments during this video mirror the comments of Attorney General Holder, who has used the Department of Justice’s resources to block state voter identification laws or state efforts to pass new voter identification laws. Attorney General Holder has openly used his authority to pursue an “aggressive” assault of states’ laws or efforts to pass laws, claiming that these laws or efforts are attempts “disenfranchise American citizens of their most precious rights.”⁴⁹
- 1. Do you agree or disagree that states voter identification laws have legitimate, franchise-protecting purposes and are not aimed at disenfranchising U.S. citizens? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: I do not have any categorical views on these issues in the abstract. My general understanding is that the Department considers questions of the validity of voting practices, such as voter identification laws, based on the particular requirements of the federal law being enforced, based on the particular facts of the practice being investigated, and based on the particular facts in the jurisdiction.

⁴⁸ Drew MacKenzie, *Loretta Lynch Attacks Voter ID Laws in Video*, Newsmax (Nov. 10, 2014).

⁴⁹ Sari Horwitz, *Eric Holder vows to aggressively challenge voter ID laws*, Washington Post (Jul. 10, 2012).

As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

The analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

I would also note that the Department of Justice has a number of important law enforcement responsibilities in this area. These responsibilities include investigating and prosecuting violations of the federal criminal laws (such as election frauds that violate the federal criminal statutes). These responsibilities also include investigating and bringing suit to prevent violations of the federal voting rights laws. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department's jurisdiction, including the federal criminal laws that criminalize various types of election fraud, and the federal voting rights laws such as the Voting Rights Act, according to their terms, in a fair and even-handed manner.

2. **Do you agree or disagree that states have a legitimate right to prevent non-citizens from voting in their respective elections? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see my response to Question 1, Part II, above.

3. **Do you agree or disagree that states have a legitimate, constitutionally sound interest in preventing fraudulent votes from being cast in their respective elections? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see my response to Question 1, Part II, above.

4. **Do you agree or disagree that the millions of people who support voter identification laws have no racial animus whatsoever? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see my response to Question 1, Part II, above.

5. **Do you agree or disagree that state efforts to pass voter identification laws are an assault on the goals and achievements of the Civil Rights Movement? If you agree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see my response to Question 1, Part II, above.

Questions on Voting Rights

III. Selective Voting Rights Enforcement

- There is concern that the Department of Justice under Attorney General Holder has embraced the view that federal voting rights laws should not be enforced in a race-neutral manner but should only be enforced to protect the rights of minority voters. Reports produced by the U.S. Commission on Civil Rights, in addition to feedback from the Commission's membership, indicate that the Department has incorporated this view into its policy and strategy.⁵⁰

1. **Do you agree or disagree that federal voting rights laws are intended to protect—and that the Department of Justice should protect—the rights of all voters regardless of race? If you disagree with this view, please provide a detailed explanation as to why.**

RESPONSE: I am not personally familiar with the specifics of each one of the civil and criminal provisions of the federal laws regarding voting rights, nor am I familiar with the specifics of their interpretation by the Department or the federal courts. My general understanding is that in some provisions of the federal civil and criminal laws regarding voting, Congress has sought to protect all voters in all elections, while other provisions are more specific; for example, in some provisions Congress has sought to protect voters in particular types of elections (e.g., voters in elections for federal office), while in other provisions Congress has sought to protect voters it has identified as having particular challenges with regard to voting (e.g., voters away from their place of residence due to service in the uniformed services and American citizens living overseas, or voters who suffer from blindness, disabilities or an inability to read or write). If I am confirmed as Attorney General, I am committed to enforcing all the federal laws within the Department's jurisdiction, including the federal voting rights laws, according to their specific terms, in a fair and even-handed manner. As a general matter, I agree that the right of every eligible American citizen to vote and have that vote counted in our elections is fundamental to our democracy and should be protected.

2. **Will you commit or not commit to reaffirming that it is the policy of the Department of Justice to pursue voting rights cases on behalf of all voters, regardless of their color, ethnicity, religion, or any other factor? If you will not commit to this specific step, please provide a detailed explanation as to why.**

RESPONSE: Please see response to Question 1, in Part III, above.

⁵⁰ See U.S. Commission on Civil Rights, Letter from Commissioner Peter Kirsanow to Chairman Charles Grassley, 1-4 (Feb. 3, 2015) (detailing Department conduct, including that of former Deputy Attorney General Julie Fernandes, with respect to the Civil Rights Division's removal of cases involving white voters from Civil Rights Division consideration and citing specific Commission reports that explore this subject in depth).

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015

QUESTIONS FROM SENATOR CRUZ

Questions on Executive Amnesty

I. Deferred Action

- Question 1(a)¹ asked if you agreed or disagreed with the legal conclusions of the Department of Justice's Office of Legal Counsel (OLC) memorandum addressing the legality of President Obama's deferred action decisions. Your answer, which addressed the basis for the OLC memorandum, did not answer the question asked.

- 1. Please take the opportunity to clarify or revise your answer: do you agree or disagree with the legal conclusions in the OLC memorandum?**

RESPONSE: As I indicated in my prior response, the legal analysis of the Office of Legal Counsel appears reasonable. Accordingly, I have no basis to disagree with its legal conclusions.

- Question 1(b) asked you to cite specific provisions of the United States Code that authorize the President to grant deferred action to illegal alien childhood arrivals and the illegal alien parents of U.S. citizens. You answered that it was your "understanding" that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.

- 2. Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?**

RESPONSE: I am familiar with the Department's brief. I am also familiar with the fact that a federal district court recently issued a preliminary injunction against the government, and believe that decision is subject to appeal.

- 3. Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is your answer an indication that you agree with the Department's legal position?**

RESPONSE: As I am not a subject matter expert in this area, I have no basis to disagree with the position taken by the Department on this legal question.

¹ The original set of questions for the record and your responses to those questions as submitted to the Committee on or about February 9, 2015, are incorporated by reference. Please refer to them as needed.

4. Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?

RESPONSE: The advice and consent power of Article II, Section 2 of the Constitution rests with the Senate, and the ultimate determination of prerequisites to be Attorney General rests with that body. I would not presume to offer any opinion about how the Senate should carry out this responsibility. As a career prosecutor and two-term United States Attorney, I believe I have conducted myself with personal and professional integrity, and have acted with fidelity to the law and with reverence to the Constitution. If confirmed as Attorney General, I would hold myself to these same standards.

5. Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?

RESPONSE: As I have stated previously, I am currently the United States Attorney for the Eastern District of New York, and am not in a position to know the details of why the Department has taken positions in certain litigation and what decisions have led to those positions.

- Question 1(d) asked if you thought that President Obama's deferred action decisions represented a proper exercise of prosecutorial discretion (in accordance with your definition of prosecutorial discretion, in your answer to question 1(c)). You answered that "the memoranda issued by the Secretary of Homeland Security appears [*sic*] to be an exercise of discretion, consistent with stated congressional priorities, to focus limited agency resources on the prosecution and removal of high priority aliens, such as criminals, threats to national security, and recent border crossers."

6. Is it fair to assess your answer as agreeing with the statement that these memoranda do represent appropriate exercises of prosecutorial discretion?

RESPONSE: As I have indicated, the legal analysis by the Office of Legal Counsel appears reasonable. Accordingly, I have no basis to disagree with its conclusions, including the conclusion that the memoranda are legally valid.

- Question 2 asked if you thought that President Obama's refusal to enforce the immigration laws for a distinct class of individuals who are not otherwise exempted by Congress violated the Take Care Clause of the United States Constitution. You answered that it was your "understanding" that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.

7. Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?

RESPONSE: I am familiar with the Department's brief. I am also familiar with the fact that a federal district court recently issued a preliminary injunction against the government, and believe that decision is subject to appeal.

8. Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is your answer an indication that you agree with the Department's legal position?

RESPONSE: As I am not a subject matter expert in this area, I have no basis to disagree with the position taken by the Department on this legal question.

9. Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?

RESPONSE: The advice and consent power of Article II, Section 2 of the Constitution rests with the Senate, and the ultimate determination of prerequisites to be Attorney General rests with that body. I would not presume to offer any opinion about how the Senate should carry out this responsibility. As a career prosecutor and two-term United States Attorney, I believe I have conducted myself with personal and professional integrity, and have acted with fidelity to the law and with reverence to the Constitution. If confirmed as Attorney General, I would hold myself to these same standards.

10. Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?

RESPONSE: As I have stated previously, I am currently the United States Attorney for the Eastern District of New York, and am not in a position to know the details of why the Department has taken positions in certain litigation and what decisions have led to those positions.

- Question 3 asked if "the President" (meaning either President Obama or any future president) had the authority to exercise executive discretion to categorically exempt a class of people from (a) enforcement of the Affordable Care Act, (b) enforcement of federal environmental laws, and/or (c) enforcement of the Internal Revenue Code. You answered that your "understanding of the deferred action guidance issued by the Department of Homeland Security is that the guidance does not grant deferred action on a systematic basis," but rather "establishes a series of factors, to be applied on a case-by-

case basis, by those individuals responsible for enforcing our nation's immigration laws in order to prioritize the limited resources afforded to the agency."

11. Your answer mentions the application of a "series of factors" that "those individuals responsible for enforcing our nation's immigration laws" are to apply on a "case-by-case basis." To clarify, do you agree or disagree that federal employees of United States Citizenship and Immigration Services (USCIS) are free to ignore the deferred action criteria established by the Secretary of Homeland Security? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: As set forth in the OLC Memorandum, "the case-by-case discretion given to immigration officials under DHS's proposed program alleviates potential concerns that DHS has abdicated its statutory enforcement responsibilities with respect to, or created a categorical, rule-like entitlement to immigration relief for, the particular class of aliens eligible for the program. An alien who meets all the criteria for deferred action under the program would receive deferred action only if he or she 'present[ed] no other factors that, in the exercise of discretion,' would 'make[] the grant of deferred action inappropriate.' Johnson Deferred Action Memorandum at 4. The proposed policy does not specify what would count as such a factor; it thus leaves the relevant USCIS official with substantial discretion to determine whether a grant of deferred action is warranted. In other words, even if an alien is not a removal priority under the proposed policy discussed in Part I, has continuously resided in the United States since before January 1, 2010, is physically present in the country, and is a parent of an LPR or a U.S. citizen, the USCIS official evaluating the alien's deferred action application must still make a judgment, in the exercise of her discretion, about whether that alien presents any other factor that would make a grant of deferred action inappropriate." OLC Mem. at 28-29.

12. Your answer mentions the application of a "series of factors" that "those individuals responsible for enforcing our nation's immigration laws" are to apply on a "case-by-case basis." From a legal perspective, would you have concern about the soundness of the deferred action programs if you knew (for example) that the deferred action applications were not being carefully inspected by USCIS employees, but were rather being screened through some automated process?

RESPONSE: I am unclear what you mean by "being screened through some automated process." If confirmed as Attorney General, I would seek to ensure that any advice provided by the Department concerning the implementation of such programs is consistent with the law.

13. In the event the Department of Homeland Security or USCIS uses some sort of automated review during any stage of the deferred action application review process, do you agree or disagree that such a process cannot be considered to be the result of the application of a “series of factors” on a “case-by-case basis”?

RESPONSE: I am unclear what you mean by “some sort of automated review.” If confirmed as Attorney General, I would seek to ensure that any advice provided by the Department concerning the implementation of such programs is consistent with the law.

14. Could President Obama or a future president refuse to enforce some or all of the Affordable Care Act, some or all federal environmental laws, and/or some or all of the Internal Revenue Code if he or she “establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation’s ... laws in order to prioritize the limited resources afforded to the [relevant] agency”?

RESPONSE: Prosecutorial discretion is a longstanding principle that exists in a number of different areas. Each exercise of such discretion depends on the facts of the individual circumstances, including the discretion afforded the agency by Congress. As I understand it, that discretion is particularly broad in the immigration context.

- Question 3² asked if you agreed that President Obama’s decision to defer removal actions for certain categories of illegal aliens is unreviewable by Article III courts. You answered that it was your “understanding” that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.

15. Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?

RESPONSE: I am familiar with the Department’s brief. I am also familiar with the fact that a federal district court recently issued a preliminary injunction against the government, and believe that decision is subject to appeal.

16. Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is it an indication that you agree with the Department’s legal position?

RESPONSE: As I am not a subject matter expert in this area, I have no basis to disagree with the position taken by the Department on this legal question.

² This second “Question 3” was a typographical error, and should have been sent to you as “Question 4.”

17. Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?

RESPONSE: The advice and consent power of Article II, Section 2 of the Constitution rests with the Senate, and the ultimate determination of prerequisites to be Attorney General rests with that body. I would not presume to offer any opinion about how the Senate should carry out this responsibility. As a career prosecutor and two-term United States Attorney, I believe I have conducted myself with personal and professional integrity, and have acted with fidelity to the law and with reverence to the Constitution. If confirmed as Attorney General, I would hold myself to these same standards.

18. Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?

RESPONSE: As I have stated previously, I am currently the United States Attorney for the Eastern District of New York, and am not in a position to know the details of why the Department has taken positions in certain litigation and what decisions have led to those positions.

19. In your independent legal judgment, under what circumstances do courts not have authority to review the legality of the President's conduct in a case where standing can be established?

RESPONSE: There are numerous instances in which courts are barred from reviewing the merits of a claim despite the existence of Article III standing. Those include, but are not limited to, matters that are committed to agency discretion, the lack of a waiver of sovereign immunity, and lawsuits that present a political question. Many of these limitations are imposed by Congress.

II. Work Authorization

- Question 3 asked if you agreed or disagreed that the statutory language cited in the question meant that the Secretary of Homeland Security had complete discretion to grant work authorizations to any alien. You answered that it was your "understanding" that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.

1. Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?

RESPONSE: I am familiar with the Department's brief.

- 2. Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is it an indication that you agree with the Department's legal position?**

RESPONSE: As I am not a subject matter expert in this area, I have no basis to disagree with the position taken by the Department on this legal question.

- 3. Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?**

RESPONSE: The advice and consent power of Article II, Section 2 of the Constitution rests with the Senate, and the ultimate determination of prerequisites to be Attorney General rests with that body. I would not presume to offer any opinion about how the Senate should carry out this responsibility. As a career prosecutor and two-term United States Attorney, I believe I have conducted myself with personal and professional integrity, and have acted with fidelity to the law and with reverence to the Constitution. If confirmed as Attorney General, I would hold myself to these same standards.

- 4. Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?**

RESPONSE: As I have stated previously, I am currently the United States Attorney for the Eastern District of New York, and am not in a position to know the details of why the Department has taken positions in certain litigation and what decisions have led to those positions.

- Question 4 asked if you agreed or disagreed that the statutory language cited in the question meant that the Secretary of Homeland Security had complete discretion to grant work authorizations to all aliens. You answered that it was your "understanding" that a Department of Justice brief that has been filed as part of pending litigation on the subject provided that information.

- 5. Are you familiar with, or have you personally read, the relevant portion(s) of the Department brief that you referenced in your original answer?**

RESPONSE: I am familiar with the Department's brief.

- 6. Is your original answer an indication that you have no independent legal understanding of this particular legal issue, or is it an indication that you agree with the Department's legal position?**

RESPONSE: As I am not a subject matter expert in this area, I have no basis to disagree with the position taken by the Department on this legal question.

- 7. Would you consider an independent understanding of an important legal issue such as this to be a prerequisite for holding the position of Attorney General?**

RESPONSE: The advice and consent power of Article II, Section 2 of the Constitution rests with the Senate, and the ultimate determination of prerequisites to be Attorney General rests with that body. I would not presume to offer any opinion about how the Senate should carry out this responsibility. As a career prosecutor and two-term United States Attorney, I believe I have conducted myself with personal and professional integrity, and have acted with fidelity to the law and with reverence to the Constitution. If confirmed as Attorney General, I would hold myself to these same standards.

- 8. Are you under the impression that, because there is ongoing litigation involving the issue at hand, that you are not free to comment on the issue as a nominee for Attorney General?**

RESPONSE: As I have stated previously, I am currently the United States Attorney for the Eastern District of New York, and am not in a position to know the details of why the Department has taken positions in certain litigation and what decisions have led to those positions.

III. Advance Parole as Pathway to Citizenship/Benefits

- Question 1 asked if you agreed or disagreed that the Secretary of Homeland Security lacked the legal authority to grant "advance parole" to illegal aliens covered by DAPA (i.e., the parents of U.S.-born children who, but for their unlawful presence, would be eligible for green cards). You answered that you are "not an expert in immigration law," and that you are "not familiar with the authority that the Secretary of Homeland Security exercises over parole decisions." (You provided an identical response to Question 2, which asked if you thought that the Secretary of Homeland Security had the legal authority to grant "advance parole" to illegal aliens covered by DAPA, and whether you agreed or disagreed that granting advance parole could allow the Secretary of Homeland Security to then grant lawful permanent resident status to those aliens, thereby placing them on a "path to citizenship.")

1. Please familiarize yourself with the relevant legal authorities and provide your best independent legal assessment.

RESPONSE: It is my understanding that the statutory framework for paroling aliens into the United States is set forth in 8 U.S.C. § 1182(d)(5)(A). The memorandum issued by the Secretary of Homeland Security in November 2014 regarding Deferred Action for Childhood Arrivals and Deferred Action for Parental Accountability does not authorize the parole of any alien. Independently, any alien who is granted deferred action for any reason may separately apply for advance parole to travel abroad for a limited period of time if the alien can establish that the requisite statutory criteria are met.

IV. Driver's Licenses to DACA and DAPA Recipients

- Question 3 asked if you thought that federal law compelled states to issue driver's licenses to DACA and DAPA recipients who are in the United States illegally. You answered that you were not involved in on-point litigation in the Eastern District of New York, but that "neither the 2014 Deferred Action Guidance nor any federal statute compels states to provide driver's licenses to DACA and DAPA recipients, so long as the states base eligibility on existing federal alien classifications—such as deferred action recipients, or other categories of aliens—rather than creating new state-law classifications of aliens."

1. If a state can deny driver's licenses to all deferred action recipients, then why, in your independent legal opinion, can it not deny driver's licenses to a subset of deferred action recipients?

RESPONSE: As I understand from the Department's prior filing, what a state cannot do is attempt to redefine categories of aliens that differ from those established by federal law. Otherwise a state has broad discretion in structuring its system for providing driver's licenses.

2. Is it your understanding that deferred action confers a federal alien classification under federal law?

RESPONSE: My understanding from the OLC Memorandum is that "[d]eferred action does not confer any lawful immigration status, nor does it provide a path to obtaining permanent residence or citizenship." OLC Mem. at 2.

3. Is there any federal statute that authorizes deferred action for illegal aliens covered by DACA and DAPA?

RESPONSE: As you are aware, this issue is currently the subject of pending litigation and has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

4. If not, then on what legal basis can states ever be compelled to provide driver's licenses to DACA and DAPA recipients?

RESPONSE: Federal preemption extends both to law created by statute as well as law created by administrative action, such as regulation. If a state classification of alien status attempts to redefine categories of aliens in a manner inconsistent with federal law, then it is preempted by that law.

Questions on DOJ Legal Positions and Practices

I. Attorney General's Advisory Committee

- Question 2 asked if you provided any written or verbal advice, feedback, or information, or communicated in any direct or indirect way, via official or non-official channels, with either the Attorney General, the Deputy Attorney General, or the Associate Attorney General, on an array of important legal subjects or issues that have been handled by the Obama Administration. Your answer referred us to the Advisory Committee "summaries of our monthly meetings, which I understand the Department made available in unredacted form to Committee staff for the purpose of its consideration of my record despite their pre-decisional, deliberative nature." Your answer also stated that "some of the topics you have highlighted above arose in AGAC meetings, such as the lessons that United States Attorney's Offices can learn from the flawed Operation Fast and Furious." While appreciated and helpful, your answer is only partially responsive.
 1. **With respect to the Obama Administration's approach to immigration policies:**
 - a. **Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?**
 - b. **Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?**
 2. **With respect to the Obama Administration's approach to the Defense of Marriage Act (DOMA), including the Administration's decision to no longer defend DOMA in federal court:**
 - a. **Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?**

6. With respect to the Obama Administration's refusal to appoint a special prosecutor to investigate alleged Internal Revenue Service (IRS) political targeting of private organizations seeking tax-exempt status:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
7. With respect to the Obama Administration's handling of Operation Fast and Furious, including Attorney General Holder's handling of his contempt citation:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
8. With respect to the Department of Justice's surveillance of reporters:
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?
 - b. Did you ever communicate verbally or in writing (including via paper or electronic correspondence, including via personal e-mail) with the Attorney General, Deputy Attorney General, or Associate Attorney General about the above outside of the formal Advisory Committee setting?
9. With respect to the Department of Justice's application of the Foreign Corrupt Practices Act (FCPA):
 - a. Did you ever supply any pre-decisional input to the Attorney General, Deputy Attorney General, or Associate Attorney General on the above outside of the formal Advisory Committee setting?

13. It is our understanding that the Executive Office for United States Attorneys is the component of the Department of Justice that provides logistical support for the Advisory Committee meetings. Given your leadership roles within the Advisory Committee, please provide information about the number of Department personnel who worked on Advisory Committee issues, the physical resources of the Department used in support of the Advisory Committee meetings, and any relevant cost estimates.

14. In the event that you are confirmed to serve as Attorney General, will you commit or not commit to release some or all of the Advisory Committee materials to the general public? If you will not commit to this step, please provide a detailed explanation as to why.

RESPONSE (Questions 1-14): No. However, as I stated in my previous answer, the best and most comprehensive record of my work in connection with the Attorney General's Advisory Committee (AGAC) would be reflected in the AGAC meeting minutes that the Department made available to the Committee for review.

With respect to your question about the resources that the Executive Office for United States Attorneys devotes to AGAC activities, the AGAC meets at the Robert F. Kennedy Main Justice building in Washington, D.C., and comprises ten subcommittees and sixteen working groups; these smaller groups meet both in Washington and outside of the Washington area depending on the nature of the subcommittee/working group. As is reflected in the minutes made available to the Committee, the AGAC has worked hard to conserve costs in recent years, including by conducting business through teleconferences.

In general, every subcommittee/working group has an EOUSA staff attorney liaison (former or current Assistant United States Attorney) assigned to each group. Very often these staff attorney liaisons cover more than one committee/working group and assist the subcommittee/working groups as a subject matter expert and assist with meeting logistics. These staff attorneys' time commitments are best described as a wide range from a few hours every few months to daily interaction when the AGAC is in session in Washington. The AGAC and its subcommittees and working groups spent \$490,743 on travel for meetings last fiscal year.

It is my understanding that when the Department provided the Committee with access to the minutes for the AGAC in connection with my nomination, it was with the explanation that the AGAC's value derives in large part from the United States Attorneys' ability to deliberate fully and frankly in meetings about operational, management, and policy issues with the understanding that such discussions would not be made public.

II. DOJ Refusal to Defend DOMA

- Question 1 asked if you agreed or disagreed with Attorney General Holder that no "reasonable" arguments could be made in defense of a law that defines marriage as limited to the union of one man and one woman. You responded that no reasonable

arguments could be made in defense of such a law given that discrimination on the basis of sexual orientation is reviewed under heightened scrutiny.

1. To date, is there any Supreme Court authority holding that classifications based on sexual orientation are subject to heightened scrutiny?

RESPONSE: The Supreme Court's decision in *Windsor v. United States* appears to reflect a less deferential review than that traditionally associated with rational basis review, but the Court did not explicitly address what standard of review applies to classifications based on sexual orientation.

2. If not, then is it fair to say that there are reasonable grounds for defending a law that defines marriage as limited to one man and one woman since the Department is free to argue that a lower standard of scrutiny should apply?

RESPONSE: As the Attorney General stated in a February 23, 2011 letter to Speaker Boehner, the determination that heightened scrutiny applies to classifications based on sexual orientation was based on criteria previously set forth by the Supreme Court in cases such as *Bowen v. Gilliard* and *City of Cleburne v. Cleburne Living Center*. It is my understanding that based on prior Supreme Court precedent, the Attorney General determined that no reasonable argument could be made that the classification made in Section 3 of the Defense of Marriage Act (DOMA) is substantially related to an important government objective.

3. Do you think it is unreasonable for an individual to define marriage as the union between one man and one woman?

RESPONSE: I do not believe it would be unreasonable for an individual to adopt that view of marriage as his or her personal belief. The question of what is unreasonable for an individual to believe, however, is different from the question of what is unreasonable for a government to require. Most constitutional provisions, including the Equal Protection Clause and the Due Process Clause, constrain the actions of governments, not of individuals.

- Question 2 asked if you agreed or disagreed with Attorney General Holder's decision to not defend the Defense of Marriage Act (DOMA). Your answer appears as if it contains an inadvertent typographical error.

1. Please take this opportunity to complete your answer.

RESPONSE: Thank you for the opportunity to correct the typographical error. The last sentence of my answer to your question should read: "With respect to DOMA, the Supreme Court has now invalidated Section 3, the provision of the statute that the Attorney General determined not to defend." You are correct that I inadvertently omitted the underlined text from the response I submitted. My answer as a whole is: "When Congress passes a law, the Department of Justice should vigorously defend the constitutionality of that law. That is a vitally

important principle and a longstanding tradition of the Department of Justice, which affords appropriate respect to Congress as a co-equal branch of government, and I fully subscribe to it. As I have stated elsewhere, however, there are limited exceptions to this rule. With respect to DOMA, the Supreme Court has now invalidated Section 3, the provision of the statute that the Attorney General determined not to defend.”

III. DOJ Refusal to Enforce Federal Marijuana Laws

- Question 4 asked if you agreed or disagreed with the statement that states that have legalized marijuana for medicinal use have done so in violation of existing federal law. Your answer stated that the “manufacture and distribution of marijuana is prohibited by federal law, specifically, the Controlled Substances Act (CSA), except as authorized pursuant to limited exceptions within the CSA concerning research and related activities.” Your answer did not answer the question asked.

1. **Please take the opportunity to clarify or revise your answer: do you think that states that have passed so-called medical marijuana laws are in compliance with federal law?**

RESPONSE: The Controlled Substances Act (CSA) does not distinguish between medicinal and recreational uses of marijuana. Accordingly, my response applies equally to marijuana intended for either use.

2. **Please take the opportunity to clarify or revise your answer: do you think that states with so-called medical marijuana laws cannot, by definition, be in compliance with federal law, given your own admission that “[m]arijuana is a Schedule I controlled substance with no currently accepted medical use in the United States”?**

RESPONSE: As stated in response to Question 1 above, the CSA does not distinguish between medicinal and recreational uses of marijuana. Accordingly, my response applies equally to marijuana intended for either use. The statement that “marijuana is a Schedule I controlled substance with no currently accepted medical use in the United States” is the determination of the Department of Health and Human Services and the Drug Enforcement Administration. As previously stated, the potential for medicinal uses of marijuana and its components is the subject of ongoing research. Such research is appropriately assessed and evaluated by the Department of Health and Human Services within the statutory framework of the CSA, which I understand has occurred in the past, as recently as 2011, in the consideration of petitions to reschedule marijuana.

- Question 9 asked you what steps you would take to require states that have legalized the cultivation, distribution, and sale of marijuana to cease and desist in their support of such activities (in order to come into compliance with federal law). You answered that you

were “not in a position to take the types of action” suggested because of your current position. The question could have been more clearly phrased.

3. In the event you are confirmed to serve as the next Attorney General, what specific steps will you take as Attorney General to require these states to cease and desist their support of the cultivation, distribution, and sale of marijuana, or to otherwise bring these states into compliance with existing federal controlled substance law?

RESPONSE: If confirmed as Attorney General, I can assure you that the Department of Justice will continue to enforce the CSA in *all* states and will focus federal resources on the most significant threats to our communities. As in all areas of civil and criminal enforcement, the Department uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant public health and public safety threats. In doing so, the Department’s August 29, 2013 memorandum identifies eight enforcement priorities that historically have been and continue to be of primary importance in guiding the exercise of prosecutorial discretion in the area of marijuana enforcement. The guidance also explains the Department’s expectation that state and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems to address the threat those state laws could pose to public safety, public health, and other law enforcement interests. The system not only must have robust controls and procedures in place, but also be effective in practice.

- Question 12 asked if you agreed or disagreed with the Obama Administration’s decision to effectively suspend enforcement of the federal ban on marijuana (except with respect to certain enforcement priorities) in states that have legalized the cultivation, distribution, and sale of marijuana. You answered that “[n]either the Administration nor the Department of Justice has suspended enforcement of the Controlled Substances Act in states that have legalized the cultivation, distribution, or sale of marijuana,” and went on to cite Department guidance on marijuana enforcement.

4. Would you agree or disagree with the statement that the Department of Justice’s guidance on marijuana enforcement, in the form of four separate memoranda that have been issued over the course of the Obama Administration, amount to a rollback of federal marijuana enforcement efforts? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: I respectfully disagree with this statement. As noted above and as I can assure you from my experience as the United States Attorney for the Eastern District of New York, the Department of Justice continues to enforce CSA in *all* states, focusing federal resources on the most significant threats to our communities in its exercise of prosecutorial discretion in the area of marijuana enforcement. The Department has not suspended or rolled back enforcement of the CSA in states that have legalized the cultivation, distribution, or sale of marijuana. The Department’s August 2013 memorandum simply provides guidance, applicable to federal prosecutors in every state, regarding the use of the Department’s limited investigative and

prosecutorial resources to address the most significant public health and public safety threats in an effective, consistent and rational way.

IV. DOJ Refusal to Appoint Special Prosecutors for IRS Matters

- Questions 1 and 2 asked you if you agreed with Attorney General Holder's decision to not appoint a special prosecutor to investigate potential IRS abuses, and also if you would commit to appointing a special prosecutor to investigate those abuses. Your joint answer to those two questions praised the objectivity of Department of Justice officials and deferred to the judgment of Attorney General Holder. Your answer did not answer the question asked.

1. Please take the opportunity to clarify or revise your answer: will you or will you not commit to appointing a special prosecutor to investigate the reported IRS abuses?

RESPONSE: In my current position as United States Attorney for the Eastern District of New York, I am not privy to the details of the current investigation concerning allegations of improper targeting of certain tax exempt organizations by IRS employees. It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. If confirmed as Attorney General, I can assure the Committee that I will request a briefing concerning the status of the investigation and will ensure that all aspects of the investigation will be conducted in accordance with Department policies and procedures. Based on the information currently available to me, I have no reason to question the ability of our career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally.

2. During your time as Vice Chair and (subsequently) Chair of the Attorney General's Advisory Committee, but prior to revelations of these IRS abuses entering the public domain, were you aware of any contact or communication between former IRS Commission Lois Lerner and any other Department of Justice officials, including, but not limited to, Attorney General Holder?

RESPONSE: No.

V. Operation Fast and Furious

- Question 1 asked if you agreed or disagreed that Operation Fast and Furious was effective in tracking and monitoring how Mexican drug cartels obtained firearms. You answered that you “share[d] the perspective of many, including the Department of Justice’s Inspector General and Attorney General Holder, that [Operation Fast and Furious] was a flawed operation.”
 1. **Please take the opportunity to clarify or revise your answer: by stating that you believe that Operation Fast and Furious was a “flawed operation,” would you admit that it is fair to say that it was ineffective?**
 2. **Please take the opportunity to clarify or revise your answer: by stating that you believe that Operation Fast and Furious was a “flawed operation,” would you admit that it may have jeopardized the safety of both U.S. citizens and Mexican nationals?**
 3. **Please take the opportunity to clarify or revise your answer: by stating that you believe that Operation Fast and Furious was a “flawed operation,” would you admit that it may have increased the flow of firearms into Mexico, whereas traditional enforcement measures would have prevented some of those weapons from entering cartel members’ hands?**
 4. **In the event you are confirmed to serve as the next Attorney General, as Attorney General, will you commit or not commit to at least conferring with the relevant congressional committee chairs prior to initiating any similar law enforcement operations (particularly if there is an international dimension to the operation)? If you will not commit to the above course of action, please provide a detailed explanation as to why.**

RESPONSE (Questions 1-4): It is my understanding that the Attorney General has stated unequivocally, and the Inspector General’s report found, that the tactics employed in that operation were flawed, that the IG report also found that the operation failed to adequately mitigate risks to public safety, and that the Department has taken extensive steps to ensure that such tactics are not used again in the future.

- Question 3 asked for your legal understanding of the origins, nature, and purpose of the doctrine of executive privilege (which is the doctrine President Obama invoked, and to some degree is still invoking, to withhold documents pertaining to Operation Fast and Furious). You answered, in substance, that the “doctrine is constitutionally-based,” that it is a tool available to the executive branch “in order to preserve the separation of powers.” Respectfully, your answer demonstrates a potential, significant misunderstanding of the doctrine and application of executive privilege, and clarification is required, particularly insofar as you view it as a device for preserving the separation of powers.

5. Please take the opportunity to clarify or revise your answer: by stating that the “doctrine [of executive privilege] is constitutionally-based,” is it your position that the doctrine of executive privilege is authorized by a specific clause or clauses of the United States Constitution? If your answer is yes, please cite the clause or clauses that serve as the basis for position.

RESPONSE: As the Supreme Court explained in *United States v. Nixon*, the seminal case on Executive Privilege, “[t]he privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.” 418 U.S. 683, 708 (1974).

6. Please take the opportunity to clarify or revise your answer: by stating that the doctrine of executive privilege exists “in order to preserve the separation of powers,” is it your position that executive privilege is available for use on any occasion when a president or his personnel do not wish to disclose potentially problematic or embarrassing information to Congress? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.

RESPONSE: It is not my understanding that the President has invoked Executive Privilege over information because it is “potentially problematic or embarrassing.” Rather, the privilege was invoked to protect important constitutional considerations, including the separation of powers. If confirmed as Attorney General, I would ask the President to invoke Executive Privilege, if at all, only in appropriate circumstances, and not because the information is “potentially problematic or embarrassing.”

7. Please take the opportunity to clarify or revise your answer: by stating that the doctrine of executive privilege exists “in order to preserve the separation of powers,” is it your position that executive privilege can be invoked in circumstances other than the narrow circumstance of shielding advice and counsel provided by a president’s “inner circle” of advisors? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.

RESPONSE: Yes. Executive Privilege has been invoked by administrations of both parties to protect against the disclosure of a wide variety of information from across the Executive Branch, including national security information and sensitive information concerning foreign relations. It is my understanding that the district court presiding over the lawsuit filed by the House Committee on Oversight and Government Reform has determined that Executive Privilege may be asserted over materials going beyond “advice and counsel provided by a president’s ‘inner circle’ of advisors.” For additional information about this topic, I would refer you to the brief filed by the Department on this issue in that litigation.

8. Existing case law on the subject of executive privilege seems to support the principle that the doctrine of executive privilege is very limited, and can only be applied in the narrow circumstance of shielding advice and counsel provided by a president's "inner circle" advisors. Do you agree or disagree with this view of the limits of application of the doctrine of executive privilege? If you disagree with this view, please provide a detailed explanation as to why, with appropriate citations to existing provisions in the United States Code and precedential federal case law.

RESPONSE: Please see my answer to the previous question. It is my understanding that your question does not accurately capture the existing precedent on this issue.

9. In the event you are confirmed to serve as the next Attorney General, as Attorney General, will you commit or not commit to advising the President of the current, precedent-based limitations of the application of the doctrine of executive privilege? If you will not commit to the above course of action, please provide a detailed explanation as to why.

RESPONSE: Yes. In any instance in which I or any other Executive Branch official would request the assertion of Executive Privilege, I would commit to advising the President about the applicable law and precedent underlying the assertion.

- Question 5 asked you if you would commit to turning over to both chambers of Congress any and all remaining documents that Attorney General Holder has refused to provide during prior congressional investigation of Operation Fast and Furious. You answered that you would only commit to "being open to a negotiated resolution of the dispute that balances the legislative need for the documents at issue with the important Executive and constitutional interests at stake."

10. Please take the opportunity to clarify or revise your answer: by stating that you would be "open to a negotiated resolution," is it your position that the executive branch can never be required to produce documents, even in accordance with a duly issued subpoena? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.

11. Please take the opportunity to clarify or revise your answer: by stating that you would be "open to a negotiated resolution," is it your position that the executive branch can never be compelled to produce documents, even if it is an Article III federal court that compels that production? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.

12. One could interpret your answer as an indication that the executive branch can never be compelled to produce documents, even under circumstances where an Article III federal court compels that production. Would you agree that the executive branch is compelled to produce documents when instructed to do so by an Article III federal court? If you would not agree with this statement, please provide a detailed explanation as to why, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
13. Please take the opportunity to clarify or revise your answer: by stating that you would be “open to a negotiated resolution of the dispute that balances the legislative need for the documents at issue with the important Executive and constitutional interests at stake,” is it your position that the executive branch gets to make the determination about what materials to turn over or not to turn over to Congress based on what the executive branch believes Congress needs for legislative purposes? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
14. Please take the opportunity to clarify or revise your answer: by stating that you would be “open to a negotiated resolution of the dispute that balances the legislative need for the documents at issue with the important Executive and constitutional interests at stake,” is it your position that the legislative branch does not possess independent constitutional authority to compel production of documents for oversight purposes? If your answer is yes, please provide a detailed explanation of your position, with appropriate citations to existing provisions in the United States Code and precedential federal case law.
15. In the event you are confirmed to serve as the next Attorney General, as Attorney General, will you commit or not commit to complying with all duly issued subpoenas and Article III federal court orders that call for the production of Department of Justice documents? If you will not commit to the above course of action, please provide a detailed explanation as to why.

RESPONSE (Questions 10-15): As the United States Attorney for the Eastern District of New York, I have not had occasion to study the doctrine of Executive Privilege, but my understanding is that the doctrine is constitutionally-based. I also understand that the scope of the privilege is the subject of ongoing litigation. It is also my understanding that in the course of that litigation, the Department has produced documents consistent with the district court’s order. I commit that, if I am confirmed as Attorney General, I would work closely with Congress to accommodate its legislative interests, consistent with the constitutional and statutory obligations of the Executive Branch. I would hope that these efforts would eliminate the need for a congressional subpoena.

- Question 6 asked you if you would commit to preserving the entire amount of Operation Fast and Furious documents in the possession of the Department of Justice, in order to permit a subsequent Administration or federal court the opportunity to review those documents (if they so chose). You answered that you would only commit to “ensuring that the Department complies with its preservation obligations.”

16. Please take the opportunity to clarify or revise your answer: by stating that you would only commit to “ensuring that the Department complies with its preservation obligations,” is it your position that the Department has the authority to dispose of investigation-related documents or other sensitive documents? If your answer is yes, please provide a detailed explanation of your position.

RESPONSE: According to the Federal Records Act (44 U.S.C. § 3101) and the National Archives and Records Administration Act (NARA) regulations (36 C.F.R. §§ 1225 and 1226), the Department has the authority to dispose of records only in accordance with the applicable NARA-approved records retention schedules, and, if applicable, only consistent with independent preservation obligations, such as those required in civil litigation.

17. In light of recent concerns about federal agency record destruction and federal agency failure to preserve records, and your knowledge as the United States Attorney for the Eastern District of New York, please provide detailed information about the following:

a. Your understanding of the Department’s statutory record preservation obligations.

RESPONSE: Please see the answer to Question 16 above.

b. Your understanding of the Department’s regulatory record preservation obligations.

RESPONSE: Please see the answer to Question 16 above.

c. Your understanding of the Department’s internal (i.e., Department-established) record preservation obligations.

RESPONSE: My understanding is that the Department has numerous internal record preservation obligations, including DOJ Order 802, Management of Preservation Responsibilities, which was issued on July 17, 2014. The Department also has independent record preservation obligations, such as in response to litigation.

18. As the United States Attorney for the Eastern District of New York, you should be familiar with the array of statutory options for criminal prosecution of individuals who violate record or information preservation requirements. Please provide a complete list of the federal criminal statutes that would apply to individuals who violate record or information preservation requirements (including the relevant statutes of limitation for each of those options).

RESPONSE: In certain circumstances, an individual who violates record or information preservation requirements with criminal intent could be prosecuted for Obstruction of Justice offenses under Chapter 73 of Title 18. For example, a person may be prosecuted under 18 U.S.C. § 1505 where such individual corruptly “influences, obstructs, or impedes or endeavors to influence, obstruct, or impede” a pending proceeding before a United States agency or department or “any inquiry or investigation . . . being had by either House, or any committee of either House or any joint committee of the Congress.” 18 U.S.C. § 1515(b) clarifies that this can include withholding or concealing a document or other information. Similarly, under 18 U.S.C. § 1519, it is a crime to knowingly conceal or cover up any record or document with the intent to influence a matter within the jurisdiction of any department or agency of the United States. The relevant statute of limitations for these and most other federal crimes is five years. *See* 18 U.S.C. § 3282(a).

19. As the United States Attorney for the Eastern District of New York, please explain if the above list of federal criminal statutes covering the destruction of record or information preservation requirements would be applicable to federal employees.

RESPONSE: Depending on the facts, these federal criminal statutes could potentially apply to federal employees.

20. As the United States Attorney for the Eastern District of New York, do you think that, if it is determined that a Department of Justice employee destroyed Department records (regardless of subject matter), and that destruction in fact violated federal law, the employee who violated federal law should be prosecuted? If you disagree with this view, please provide a detailed explanation as to why.

RESPONSE: If it is determined that a Department of Justice employee destroyed Department records in violation of federal law, I would exercise prosecutorial discretion using similar—but not identical—factors I use in weighing whether to prosecute non-Department employees. These would include evaluating the strength of the evidence, including evidence of requisite criminal intent, the duration and magnitude of the alleged misconduct, and any potential defenses. In addition, if the acts were committed by a Department employee, I would take into account the elevated responsibility we have to uphold the law and maintain the public’s trust and confidence.

21. In the event you are confirmed to serve as the next Attorney General, as Attorney General, will you commit or not commit to prosecuting a Department of Justice employee under the above circumstances? If you will not commit to the above course of action, please provide a detailed explanation as to why.

RESPONSE: Please see the answer to Question 20 above.

22. Putting aside formal preservation requirements, do you agree or disagree that most, if not all, Department of Justice documents in connection with Operation Fast and Furious investigation now have significant historical value, and ought to be preserved out of an abundance of caution for ensuring the completeness of the historical record? If you disagree with this view, please provide a detailed explanation as to why.

RESPONSE: While the requirements of applicable records schedules are mandatory, the Department may determine that particular groups of records merit longer retention periods, depending on the circumstances, in coordination with (and subject to approval by) NARA. The Department may make such a determination with respect to the Operation Fast and Furious investigation documents, in coordination with (and subject to approval by) NARA, as necessary based on the appropriate factors and circumstances.

VII. DOJ Foreign Corrupt Practices Act Abuses

- Question 1 asked if you agreed or disagreed with the claim that the ability of the Department of Justice to keep and use FCPA settlement fines incentivized application of the Foreign Corrupt Practices Act (FCPA). You answered that you disagreed with the claim, which you “believe[d] is built on a faulty premise regarding the process by which criminal fines and other financial penalties are paid and subsequently put to use.” You went on to say that FCPA-related fines were not “kept” or “used” by the Department, that “no such use incentivizes application of the FCPA,” and that funds from these fines were “paid into the U.S. Treasury [and] are not available for use by the Department except through the appropriations process or by statute.” In subsequent parts of your answer, you specifically cited 42 U.S.C. 10601 and 28 C.F.R. 527 as the basis for your claim that the Department does not keep these funds, although you acknowledge the existence and use of the “3% Fund” and its ability to be used to “support certain litigation, data administration, and personnel costs.” Additional information is required about the Department’s ability to access and use the resources of the Crime Victim Fund.

- 1. Please take the opportunity to clarify or revise your answer: by stating that funds resulting from FCPA fines were “paid into the U.S. Treasury [and] are not available for use by the Department except through the appropriations process or by statute,” is it your position that the Crime Victim Fund is not**

an offsetting account, set apart from the general fund? If your answer is yes, please provide a detailed explanation of your position.

RESPONSE: The Crime Victims Fund is governed by statute and is a separate account set apart from the general fund.

- 2. 42 U.S.C. 10601(c) essentially states that sums that are deposited in the Crime Victim Fund are available for expenditure without fiscal year limitation.³ Would you agree or disagree that this means that the Department of Justice’s access to the Crime Victim Fund is not restricted by the “appropriations process,” at least insofar as it means the Fund’s revenue is not dependent on the distribution of additional revenue from the general fund of the Treasury? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Fines in criminal cases are imposed by courts and directed to the Crime Victims Fund, pursuant to Title 42, United States Code, Section 10601. The expenditure of these funds is controlled by statute and can only be disbursed for victim-related purposes. As I understand it, the disbursement of funds for victim-related purposes is restricted by the appropriations process.

- 3. During your most recent tenure as the United States Attorney for the Eastern District of New York, did you ever require, as part of an FCPA settlement, that a corporation or individual had to contribute funding to a non-profit or for-profit organization, rather than paying just a fine to the federal government? If your answer is yes, please describe the circumstances when this was done and, for each instance, provide the name of the organization and the justification for this approach.**

RESPONSE: During my tenure as the United States Attorney for the Eastern District of New York, I have not required, as part of an FCPA settlement, that a corporation or individual contribute funding to any non-profit or for-profit organization, rather than paying a monetary penalty to the federal government.

³ 42 U.S.C. 10601(c) states in its entirety: “Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation. Notwithstanding subsection (d)(5) of this section, all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.”

4. Please take the opportunity to clarify or revise your answer: would you agree or disagree that, by virtue of the existence of the 3% Fund (which you acknowledge), the Department does receive revenue as a result of its FCPA investigations? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: Pursuant to Public Law 113-234 and 28 C.F.R. Section 527, three percent of penalties associated with certain financial recoveries, which may or may not constitute FCPA resolutions, are paid into the 3% Working Capital Fund. As I understand it, the Collection Resources Allocation Board, overseen by the Justice Management Division, undertakes a review and determines whether and how the Department may award funds from the 3% Fund to support certain litigation, data administration, and personnel costs.

5. Please take the opportunity to clarify or revise your answer: would you agree or disagree that, by virtue of the fact that the 3% Fund permits the Department to use Fund revenue to “support certain litigation, data administration, and personnel costs,” that it arguably does incentivize the initiation of FCPA investigations, even if indirectly? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: I disagree. As with all cases, including all financial crime cases, career prosecutors evaluate leads, such as whistleblower complaints and referrals from law enforcement agencies and regulators, to make independent decisions regarding whether or not to initiate FCPA investigations. Career prosecutors subsequently consider the strength of the evidence and other long-standing policy considerations (*see, e.g.*, United States Attorney’s Manual (USAM) 9-28.300) in determining the appropriate charging and/or resolution decision for each particular investigation, regardless of whether that decision results in a contribution to the 3% Fund. Moreover, the ultimate allocation of money from the 3% Fund is determined by the Collection Resources Allocation Board and overseen by the Justice Management Division, not by the Criminal Division, where the prosecutors who initiate, investigate and prosecute FCPA cases work.

6. During your most recent tenure as the United States Attorney for the Eastern District of New York, please indicate:
- a. How much revenue your office has received from the 3% Fund since FY 2010.
 - b. If any revenue, how much of that revenue went to “support certain litigation.”
 - c. If any revenue, how much of that revenue went toward “data administration.”
 - d. If any revenue, how much of that revenue went toward “personnel costs.”
 - e. If any of that revenue went toward “personnel costs,” how much of that revenue was paid out in the form of bonuses, cash awards, or non-salary payments.

- f. If any of that revenue went toward “personnel costs,” and any of that “personnel costs” revenue was paid out in the form of bonuses, cash awards, or non-salary payments, if any of that revenue was paid to Eastern District of New York attorneys who handled FCPA investigations.**

RESPONSE: As noted above, my Office does not make determinations about whether and how the Department disburses 3% Fund monies to support certain litigation, data administration and personnel costs. However, I can tell you that since FY 2010, the Eastern District of New York (EDNY) received roughly \$5.7 million in resources in 3% Fund monies.

Of that, approximately \$978,000 has been allocated for litigation and other non-personnel purposes, and approximately \$4.8 million has been allocated to support personnel costs. As I understand it, of the 3% Fund monies used for personnel costs, none of these funds were directed to salaries of the attorneys in the EDNY who have handled FCPA investigations.

Additionally, approximately \$1.9 million was allocated from the Department’s Civil Division 3% Funds to EDNY to support contractors working on civil enforcement in the Residential Mortgage-Backed Securities arena.

- Question 2 asked if the Eastern District of New York, during your tenure as United States Attorney, has actually tried any FCPA cases to a verdict in federal court. You answered that your office has brought several “significant FCPA investigations [to] corporate resolutions.” The hyperlinks to two news stories describing major FCPA investigations make clear, however, that none of these cited investigations were in fact resolved at trial, but actually involved out-of-court resolution. Your citation to the news story recounting the conviction of former Morgan Stanley managing director Garth Peterson did involve a court, but it was in connection with Peterson’s guilty plea on criminal charges for evading Morgan Stanley’s own internal accounting controls. You acknowledge in your answer that “the United States Attorney’s Office for the Eastern District of New York has not had an FCPA trial to date.”

- 7. Would you agree or disagree that the absence of federal court involvement in FCPA cases (given that all of the FCPA cases you have handled within the Eastern District of New York) prevents the establishment of precedent that could serve as important public-domain guidance for companies seeking to remain in compliance with the provisions of the FCPA?**

RESPONSE: I disagree that there has been an absence of federal court involvement in FCPA cases. Within the past year alone, a circuit court has rendered two opinions interpreting various aspects of the FCPA, and two district courts have similarly issued written opinions on the FCPA. The Second Circuit, Fifth Circuit, Eighth Circuit, and Eleventh Circuit, as well as a number of district courts in other circuits, have rendered opinions regarding the scope and application of the FCPA. Courts also have presided over and approved a significant number of corporate and individual guilty pleas relating to the FCPA, including ten in 2014 alone.

In addition to the cases that have been and are being litigated in court, the Department resolves many cases short of trial. While the Department is prepared to litigate cases, which might lead to additional court rulings regarding the FCPA, the Department does not litigate cases where a defendant seeks a resolution short of trial that is an advantageous outcome for the United States. The Department, however, makes its FCPA resolutions publicly available, including corporate resolution documents containing the factual basis and relevant considerations for such resolutions.

The Department also recently issued *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (the “*Resource Guide*”), as well as over 60 opinion letters in response to opinion requests concerning its enforcement intent about actions that may be perceived as violating the anti-bribery provisions of the FCPA, many of which advised that the Department did not intend to take any enforcement action. These steps by the Department all provide significant guidance to companies seeking to remain in compliance with the FCPA.

- Question 13 asked you if you would commit as Attorney General to publishing information about the FCPA cases that the Department has decided not to pursue or prosecute (in order to help provide guidance to companies who are seeking to avoid running afoul of federal law). You answered that you would commit to “continuing the Department’s practice of actively pursuing and implementing means by which declinations and other information about the decision to prosecute, or not, can be responsibly and appropriately shared,” but would not commit to sharing declination cases publicly.

8. With the understanding that providing information about declinations could allow some companies to circumvent federal law (which may be the Department’s primary concern), would you acknowledge that some companies would use information about declinations to improve their FCPA compliance practices?

RESPONSE: I recognize the benefit of providing information about declinations and commit to continuing these efforts, in keeping with Department of Justice policy and fundamental fairness to individuals and companies that are not being prosecuted. The United States Attorneys’ Manual (USAM) describes situations in which a United States Attorney can exercise discretion to provide notice that an investigation is being closed in all areas of corporate criminal prosecution, including FCPA cases. See USAM § 9-11.155. While the Department has a longstanding general practice of refraining from discussing non-public information on matters it has declined to prosecute, in large part to protect the privacy rights and other interests of the uncharged parties involved, the Department has provided anonymous examples of declinations in the *Resource Guide*, as well as in over 60 opinion letters often indicating that the Department did not intend to take any enforcement action. In addition, companies looking to improve their FCPA compliance practices have a number of guideposts that are publicly available. The United States Sentencing Commission Guidelines Manual contains a section titled, “Effective Compliance and Ethics Program,” which includes several pages of in-depth commentary. The Department also discusses compliance programs at length in the *Resource Guide*, devoting ten pages to the “Hallmarks of Effective Compliance Programs” and providing a “Compliance

Program Case Study” and several hypothetical questions and answers. Moreover, in each of the Department’s FCPA resolutions with companies, the company agrees to enhance its compliance program consistent with a detailed compliance undertaking that is attached to the resolution and made available to the public on the Department’s website.

9. Would you at least acknowledge that the Department’s refusal to share information about declinations contributes to the perspective that the Department prefers ambiguity of what will and will not be pursued by the Department for revenue-generating purposes?

RESPONSE: The Department has responsibly shared information about several declinations, and I have committed to continue to explore ways by which the Department can responsibly share information while protecting the many sensitive interests that federal criminal investigations implicate. The Department has taken significant steps to provide clarity and transparency in the FCPA context, including making all of its corporate FCPA resolutions, together with the corresponding resolution documents, publicly available on the Department’s website; issuing more than 60 opinion letters, which are also available on the Department’s website; and releasing the *Resource Guide*, which provides more than 100 pages of discussion regarding the FCPA and which can be downloaded from the Department’s website.

The Department does not pursue any case for revenue-generating purposes. The Department considers the strength of the evidence and other long-standing policy considerations (*see, e.g.*, USAM 9-28.300) in determining whether to bring and how to resolve an FCPA prosecution, just as it does in all areas of corporate criminal prosecution.

VIII. DOJ Civil Asset Forfeiture Abuses

- Throughout your testimony and your question responses, you have hit upon the important theme of “taking the profit out of crime and preserving the availability of assets for return to crime victims.” Admittedly, this an important goal, and I do not think there is any disagreement with the concept that reducing the profit potential of crime reduces the incidence of crime. This theme, however, raises precisely the concern that exists among individuals who support reining in what are perceived to be excesses in the federal government’s civil asset forfeiture authority.

1. Would you agree or disagree that it is at least possible that civil asset forfeiture has resulted in the permanent forfeiture of assets of innocent parties (i.e., individuals who have committed no crimes)?

RESPONSE: By the very nature of civil forfeiture, there may be instances in which assets are seized and forfeited from individuals who did not commit the crimes that generated the seized property. This is due to the fact that criminals often go to great lengths to insulate themselves from the proceeds and instrumentalities of their criminal acts—including by providing those proceeds and instrumentalities to individuals who knowingly accept and retain the criminally tainted property, even though they did not engage in the criminal activity themselves. Civil

forfeiture is often the only mechanism by which the government can take such assets out of circulation and, whenever possible, compensate victims for their losses.

At the same time, I agree that it is essential that we protect the due process rights of innocent individuals. Recognizing the importance of protecting the innocent, Congress put safeguards in place to protect innocent property owners when it passed the Civil Asset Forfeiture Reform Act (CAFRA). Even where the government has borne its burden of proving that property is linked directly to crime, CAFRA allows a property owner to defeat forfeiture where he is an innocent owner. In such cases, the government must return the seized assets to the innocent owner, who may also be entitled to attorney's fees. These protections are essential to preserve the integrity of the Asset Forfeiture Program and to ensure that individual due process rights are preserved and protected.

- 2. In situations where it is determined that a civil asset forfeiture effort resulted in the seizure of assets of innocent parties, would you agree or disagree that those seized assets ought to be returned to the innocent owners? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: Please see the answer to Question 1 above.

- 3. As the United States Attorney in charge of the Eastern District of New York, has your office ever encountered an instance where Assistant United States Attorneys and/or the law enforcement with whom you collaborate seized the property of individuals who were ultimately determined to not be involved in any criminal activity or wrongdoing? If the answer to the above is yes, please indicate if:**

- a. The seized property was ever returned to the owner(s).**

RESPONSE: In each case in which the U.S. Attorney's Office for the Eastern District of New York (the "Office") assists law enforcement in obtaining a warrant to seize an asset, the seizure is approved by a magistrate judge and based upon a showing of probable cause. The Office would not seek a warrant or file a forfeiture action unless there was probable cause to believe that the subject asset was linked to a crime and that pursuing its forfeiture was consistent with the law enforcement goals of taking the profit out of crime and ensuring victims are compensated. The interests of justice and public safety, as well as our credibility with the court, are of paramount importance, and certainly more important than forfeiting any particular asset.

I know that there have been instances where the Office has declined to pursue forfeiture of assets seized by law enforcement. In such instances, the Office has ensured that law enforcement returned the assets to their owners; such decisions, however, do not mean that the underlying seizures were unlawful. For example, in connection with the recent seizure of the contents of a safe deposit box owned by a drug trafficker that was seized pursuant to a state court warrant, hundreds of thousands of dollars in cash proceeds of drug trafficking were forfeited. However, the Office declined to pursue forfeiture of jewelry found with the cash, and ensured the return of

that jewelry to a claimant who had no connection to the crime, without the need for any litigation.

Similarly, in connection with an investigation into an international drug trafficking organization, agents presented to the Office evidence that a target's residence was a drug distribution site and, as such, subject to forfeiture as facilitating property of the target's offenses. Further investigation, however, revealed that the residence was, in fact, owned by the target's parents and that the parents had taken steps to evict the target. Accordingly, at the Office's direction, no forfeiture action of any kind was taken against the residence.

b. Any internal review was conducted as to the circumstances that led to the seizure of such property.

RESPONSE: The Office has not conducted internal reviews as described in your question. As indicated above, the fact that property was seized and subsequently returned to the owner does not necessarily mean that the seizure was unlawful or improper. Evidence of, or information as to, a claimant's innocent ownership may be presented only after a seizure has taken place. The Department is currently engaged in a review of the asset forfeiture program, and the Office is providing support, as needed, in this important process.

c. If there was an internal review into the circumstances of a seizure, if there were any findings of inappropriate seizure (or use of inappropriate tactics in a seizure).

RESPONSE: As described above, there was not such a review.

d. If there was an internal review into the circumstances of a seizure, and there were any findings of inappropriate seizure (or use of inappropriate tactics in a seizure), if there were any disciplinary measures instituted.

RESPONSE: As described above, there was not such a review.

- Question 5 asked about the Department of Justice's ability to keep and use proceeds from civil asset forfeitures, and whether that ability incentivizes the Department's use of civil asset forfeiture. You answered that "[f]ederally forfeited assets are deposited into the Assets Forfeiture Fund," and that "[t]hese funds are in turn used to compensate victims of crime, pay administrative costs, and provide critical resources to state and local law enforcement." You also answered that, "[i]f forfeited assets were deposited into the General Treasury instead of the Assets Forfeiture Fund, they would no longer be available for victims of crime." Additional information is required about the Assets Forfeiture Fund.

4. Please cite the statutory authority for the Assets Forfeiture Fund.

RESPONSE: The Department of Justice Assets Forfeiture Fund (the "Fund") is a special fund created by the Comprehensive Crime Control Act of 1984 (P.L. 98-473, dated October 12, 1984), codified at title 28, United States Code, Section 524(c), and established in the Treasury to receive the proceeds of forfeitures pursuant to any law enforced or administered by the Department of Justice.

5. Would you agree or disagree with the statement that the Assets Forfeiture Fund is an offsetting account, which can be accessed without specific appropriations from Congress? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: As I understand it, the same statute that serves as the legal basis for the Assets Forfeiture Fund (28 U.S.C. 524(c)) also governs how the money in the Fund is to be used. The uses delineated by the statute include, but are not limited to, payments to victims, payments of the costs associated with the maintenance and disposal of forfeited property, and payments to cover the costs of pursuing illicit assets. My Office is not involved in the oversight and management of the Assets Forfeiture Fund. If confirmed, I look forward to learning more about the permitted uses of the Fund.

6. Are any of the funds held in the Assets Forfeiture Fund available in the form of funding or grants for non-profit or for-profit organizations? If Assets Forfeiture Fund resources are available in the form of funding or grants for non-profit or for-profit organizations, please provide the following:

a. A list of all organizations that have received funding from the Assets Forfeiture Fund in the Eastern District of New York.

RESPONSE: The monies deposited into the Fund are available to cover all expenditures in support of the Asset Forfeiture Program that are permitted by the Fund statute. Separately, after all victims are compensated for their losses, and fund expenses are paid, state and local law enforcement agencies may receive forfeited funds through the Equitable Sharing Program. As I understand it, state and local authorities may expend those funds for law enforcement purposes, in accordance with Departmental guidelines governing the Equitable Sharing Program and subject to state and local appropriation and procurement rules. While I am not personally aware of any funds going to non-profit or for-profit organizations in the Eastern District of New York, my Office is not involved in the oversight and management of the Equitable Sharing Program or the Assets Forfeiture Fund. If confirmed as Attorney General, I look forward to learning more about the permitted uses of the Fund.

- b. If any organizations have received funding from the Assets Forfeiture Fund in the Eastern District of New York, the amounts each group has received (broken down by calendar year, if necessary).**

RESPONSE: Please see the answer to Question 6.a above.

- c. An explanation as to why that group received funding from the Assets Forfeiture Fund, when such funds are asserted to be for crime victims.**

RESPONSE: Please see the answer to Question 6.a above.

- 7. Please explain how, “[i]f forfeited assets were deposited into the General Treasury instead of the Assets Forfeiture Fund, they would no longer be available for victims of crime.” Why would it not be possible, for instance, for forfeited assets to be deposited into the “General Treasury,” with Congress appropriating funding annually for crime victim assistance or reimbursement?**

RESPONSE: Victims are compensated with assets forfeited in the case in which they are identified as victims, after costs are deducted for the seizure, maintenance, and liquidation of the assets forfeited in the case. I believe that since 2000, the Assets Forfeiture Fund has provided approximately \$4 billion in compensation to victims for their losses. If the Fund were discontinued, victims would not be compensated absent specific appropriations. In addition, prior to creation of the Fund, costs associated with execution of asset forfeiture functions were absorbed by agency operating funds, resulting in a lesser ability to pursue illicit assets due to resource competition and insufficient funding. If the Fund were discontinued, in the absence of agency appropriations dedicated to asset forfeiture, we would be likely to see a significant decline in the quantity of assets forfeited and returned to victims.

Questions on Voting Rights

I. The Voting Rights Act’s Preclearance Requirement

- Questions 1-3 asked you about your perspectives on the Supreme Court’s *Shelby County v. Holder* Voting Rights Act decision, in which the Court invalidated Section 4 of the Voting Rights Act (thereby essentially striking down the functional aspects of the Voting Rights Act’s preclearance requirement). In your answers, you declined to answer these questions on the ground that there was ongoing litigation on the subject. As a result, you did not answer the question.

- 1. Please take the opportunity to clarify or revise your answer: would you agree or disagree with the statement that the Voting Rights Act formula, which was based on social conditions in 1965, is no longer an accurate reflection of**

today's social conditions, and therefore cannot adequately serve as the foundation for a current statute? **If you disagree with this statement, please provide a detailed explanation as to why.** (Please note that this question is now not litigation-specific.)

RESPONSE: My understanding is that the Voting Rights Act (VRA) was reauthorized by Congress in 2006. As you note, the "coverage" formula in Section 4 of the VRA was invalidated by the Supreme Court in the *Shelby County* case. The decisions of the Supreme Court are the law of the land.

2. **Please take the opportunity to clarify or revise your answer: would you agree or disagree with the statement that the imposition of a federal preclearance requirement for changes to a state's election laws violates the Tenth Amendment of the United States Constitution? If you disagree with this view, please provide a detailed explanation as to why.** (Please note that this question is not litigation-specific.)

RESPONSE: The decisions of the Supreme Court are the law of the land. In *Shelby County*, the Supreme Court stated: "We issue no holding on §5 [the federal preclearance requirement] itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an 'extraordinary departure from the traditional course of relations between the States and the Federal Government.'" *Shelby County v. Holder*, 133 S. Ct. 2612, 2631 (2013).

- a. **If you believe that the current Question 2 is litigation-specific, please explain why.**

RESPONSE: Please see the answer to Question 2 above.

3. **Please take the opportunity to clarify or revise your answer: would you agree or disagree with the statement that the preclearance requirement of the Voting Rights Act is obsolete in modern America? If you disagree with this view, please provide a detailed explanation as to why.** (Please note that this question is not litigation-specific.)

RESPONSE: Please see the answer to Question 2 above.

- a. **If you believe that the current Question 3 is litigation-specific, please explain why.**

RESPONSE: Please see the answer to Question 2 above.

4. You indicated in your prior answers that the reason you could not answer these questions about the Voting Rights Act was that the *Shelby County v. Holder* litigation was ongoing. Please provide an update of the status of the *Shelby County* litigation.

RESPONSE: My understanding is that the attorneys for Shelby County have filed an application for attorneys' fees in the *Shelby County v. Holder* litigation in the District Court. I understand that this application for attorneys' fees was denied by the District Court. I further understand that part of the District Court's decision on the fees application found that the Department of Justice's litigation position on the merits in defending the constitutionality of Section 5 in the case was not frivolous, unreasonable or without foundation. The county's attorneys have filed an appeal on the attorneys' fees issue to the Court of Appeals, which remains pending. Because this case remains in litigation, I cannot comment further.

II. Voter Identification Laws and Legislation

- Several questions under this section drew from public, recorded comments you made in Long Beach, California, about states' voter identification law efforts in the days immediately following your nomination to serve as the next Attorney General. Those comments raise serious questions about your perspectives regarding federal efforts to obstruct states' efforts to enhance or secure their voting rights laws.

1. Please provide the following answers about this speech and the circumstances that led to this speech:
 - a. The nature of this trip to Long Beach, California.
 - b. Whether this trip was personal or professional, and, if professional, whether this was financed by the Department of Justice.
 - c. If this trip was both professional and financed by the Department, the official basis for the trip.
 - d. If this trip was both professional and financed by the Department, whether the speech that was recorded on the video is considered part of your official duties while on this trip.

RESPONSE: This question appears to be based on the misconception that the speech that I made regarding the common struggles of Nelson Mandela and the Reverend Martin Luther King, Jr., occurred while I was on a trip to Long Beach, California sometime in November of 2014; I have never been to Long Beach, California. In fact, it was a speech given on January 20, 2014 (Martin Luther King Day) in Long Beach, New York, which is in Nassau County and in my district as the United States Attorney for the Eastern District of New York.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR DURBIN

1. John R. Justice Student Loan Program

The Justice Department's Bureau of Justice Assistance operates an important program called the John R. Justice (JRJ) program, which provides student loan repayment assistance to state and local prosecutors and public defenders across the nation.

Congress enacted the JRJ program in 2008, modeling it after the Attorney Student Loan Repayment Program that the Department of Justice operates for its own attorneys. The JRJ program helps state and local prosecutors and public defenders pay down their student loans in exchange for a three-year obligation to continue serving in their positions. This has proven to be an effective recruitment and retention tool for prosecutor and defender offices. And since the Department of Justice is awarding hundreds of millions of dollars in grants each year to state and local law enforcement, which generates higher numbers of arrests and criminal cases, it is critical that we help prosecutor and defender offices keep experienced attorneys on staff to handle these cases.

The JRJ program has helped thousands of prosecutors and defenders across the country. But for the program to remain successful, the Department of Justice must remain committed to this program and to carefully administering and overseeing it. **Will you commit to work with me to keep this program operating effectively during your tenure if you are confirmed?**

RESPONSE: If confirmed as Attorney General, I will work with you and other Members of Congress to ensure that all DOJ programs, including the John R. Justice (JRJ) Program, operate efficiently and effectively. The Department's Bureau of Justice Assistance, which administers JRJ, also will continue to work with Congress, as well as relevant outside groups, to act on recommendations for improving JRJ.

2. Hate Crimes Reporting

Last October marked the five-year anniversary of the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, which gives the FBI authority to investigate violent hate crimes when state law enforcement agencies are unable or unwilling to do so. As I said at the time of its enactment, this law is one of the most important civil rights laws of our time.

Despite this success, we have much more work to do. The FBI recently released its annual Hate Crimes Statistics report, which indicated that state and local law enforcement jurisdictions

reported 5,928 hate crimes in 2013. As significant as that number is, the Bureau of Justice Statistics has estimated that there are actually more than 250,000 hate crimes annually.

If confirmed, will you take steps to ensure that the FBI and the Department of Justice work together with state and local law enforcement and affected communities to improve hate crime reporting?

RESPONSE: No person should be a victim of violence because of intolerance and bigotry due to his or her race, color, religion, national origin, gender, sexual orientation, gender identity or disability. Perpetrators of hate crimes must be prosecuted, and the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 strengthened the Department's ability to prosecute hate crimes. I understand that the Department has increased its outreach and training to law enforcement regarding identifying, investigating, and prosecuting hate crimes, and if confirmed as Attorney General, I look forward to strengthening these efforts.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR FEINSTEIN

1. Dangers Posed by Drones

Unmanned aircraft – or, drones – are becoming an increasing problem for air travel. Some reported “near-misses” have involved major airliners near LaGuardia and JFK airports in the district where you serve as U.S. Attorney. For example, as reported by the Washington Post on November 26, 2014, here is one example of what FAA found: “Jet Blue Flight 1572, an Airbus 319 inbound to LaGuardia Airport, reports that a suspected small drone flew ‘under the nose of the aircraft’ while between 1,500 and 2,000 feet.” Here is another example: “Air traffic controllers report that a red, black, and yellow drone ‘almost hit’ Republic Airlines Flight 6230 while inbound to LaGuardia Airport . . . about two miles north of the Verrazano-Narrows Bridge.” Just in the last week, a drone breached White House airspace, landing on the White House grounds. Press reports also state that, over the weekend, another possible drone flew approximately 100 feet above a United Airlines flight that was at an altitude of 7,000 feet. The flight was on its way to Boston’s Logan Airport.

- Will you commit that the Department of Justice will review federal criminal laws to determine which may apply to uses of drones that create hazards for air travel?

RESPONSE: I understand there is a Department of Justice Working Group, which includes privacy, policy, legal, law enforcement, and grant-making components, to identify and address policy and legal issues pertaining to the use of Unmanned Aerial Systems (UAS). The Department is also participating in an interagency process that is considering UAS-related policy issues that are shared across departments and agencies. If I am confirmed, I expect to learn more about these efforts.

- If that review shows that additional legislation is necessary, will you commit to work with me on such legislation?

RESPONSE: If I am confirmed as Attorney General, I would welcome the opportunity to work with you and other Members of Congress if there is a need for additional legislation.

2. Re-programming Funds Away from SCAAP

The Department of Justice administers the State Criminal Alien Assistance Program, or “SCAAP,” which reimburses states and localities for the extraordinary costs that they incur for incarcerating undocumented criminal immigrants. Although such costs continue to escalate, funding for SCAAP continues to fall far short, getting slashed by 70% since 2000. Eligible

jurisdictions receive only pennies on the dollar. California counties' combined SCAAP reimbursement deficit stretches into the hundreds of millions of dollars annually. Its counties are reimbursed for 10% or less of their SCAAP-related expenses. Furthermore, in each of the past two years, DOJ has used its general authority to reprogram up to 10% of an appropriation to reprogram the maximum 10% away from SCAAP, thus further reducing the already-slashed SCAAP funding by another almost \$50 million.

- Will you commit to ending this undermining of the SCAAP program by stopping the reprogramming of the maximum 10%?

RESPONSE: I understand your concerns over the reduced SCAAP funding available for direct awards to state, local, and tribal grantees. As I understand it, SCAAP can only reimburse participating jurisdictions for a small portion of their costs, which limits the program's ability to relieve the financial burden that criminal aliens impose on state and local governments. If I am confirmed as Attorney General, I will work with OJP to continue to make every effort to look for ways to improve the effectiveness of OJP research, training, and technical assistance programs, and seek ways to make OJP operations more efficient.

3. Lawyers for Unaccompanied Alien Children

In December 2008, the Unaccompanied Alien Child Protection Act was signed into law as part of the Wilberforce Trafficking Victims Protection Reauthorization Act. I worked on the 2008 and 2013 reauthorization bills to ensure that, among other things, children who arrive in the United States without a parent or guardian, are, to the greatest extent practicable, provided with counsel to represent them in legal proceedings.

As you likely know, almost 70,000 unaccompanied children entered the U.S. this summer from Central America, and current funding is only a drop in the bucket compared to the need. Yet studies show that the rate of unaccompanied alien children who show up for immigration court increases from 60.9% to 92.5% when represented by a lawyer.

- Will you commit, if confirmed, to work with the Secretaries of Health and Human Services and Homeland Security to provide as many of these children as possible with legal representation?

RESPONSE: If confirmed as Attorney General, I would work with our federal partners to explore ways to improve the effective and efficient adjudication of immigration court cases, including those involving unaccompanied children.

4. Immigration Judge Shortage

I met with a group of immigration judges this past summer who work for the Department of Justice's Executive Office for Immigration Review, known as EOIR, and was appalled at the case backlog and extreme workload they face.

With a backlog of a staggering 375,000 cases in the immigration courts, the average wait time for cases is over a year. California has the largest pending immigration court backlog, with 77,246 cases, and the second-longest wait in the country, with an average wait time of 686 days. The longer that these cases go unresolved, the longer it takes to remove criminals from this country and to end the legal limbo that thousands of people eligible for immigration relief face. Congress recently appropriated funds to EOIR for the Justice Department's request of 35 new immigration judge teams. But considering the backlog, it is not enough.

- If confirmed, will you work to increase the number of immigration judges to help alleviate this backlog?

RESPONSE: Although I am not familiar with the specifics of EOIR's case load and its adjudication rates, I understand that its case load has continued to increase over the past few years. I understand, too, that Congress has appropriated funds to hire more immigration judges and agency staff to address the increasing case load and the added demands of the recent influx of persons across the southwest border. If confirmed as Attorney General, I will work with Congress to ensure that EOIR has the resources necessary to fairly and efficiently adjudicate the cases that come before it, and that EOIR appropriately uses those funds to administer its caseload as efficiently and fairly as possible.

5. **Federal Marijuana Enforcement**

As you know, under Attorney General Holder, the Department of Justice has scaled back enforcement of federal marijuana laws -- especially in states that have legalized recreational and/or medical marijuana under their own laws. In California, for example, we learned that there are as many as 200 to 300 large marijuana grow sites in Fresno. Yet, the U.S. Attorney in that district prosecuted only 37 marijuana cases between August 2013 and December of 2014. He told my staff that he did not have sufficient resources to bring more cases. Despite these changes to Department policy, your office in New York has reportedly prosecuted "the world's largest marijuana suppliers."

- As Attorney General, do you plan to continue Attorney General Holder's policy, or do you plan to take a fresh look at the Department's approach to the enforcement of federal drug laws?

RESPONSE: The Department is currently committed to enforcing the Controlled Substances Act (CSA) in a manner that efficiently applies limited resources to address the most significant threats to public health and safety, and if confirmed as Attorney General, I will ensure that we continue to enforce the CSA.

6. Protecting Our Youth From Dangerous Synthetic Drugs

Synthetic drugs, like K-2, Spice, and Bath Salts, have been of major concern in recent years, prompting a number of efforts to combat these substances. However, when Congress outlawed several of these synthetic drugs, traffickers did not stop producing them. Instead, they slightly altered the chemical structure of illegal drugs to produce what are called “controlled substance analogues,” which mimic the effects of drugs like ecstasy, cocaine, PCP and LSD. I have introduced a bipartisan bill with Senator Portman and many others, the *Protecting Our Youth from Dangerous Synthetic Drugs Act of 2015*, which gives law enforcement tools they need to address this issue.

- Would legislation that enables the federal government to establish and maintain a list of controlled substance analogues, thereby clearly defining whether a new synthetic drug is illegal, be helpful to the Department of Justice’s efforts to prosecute synthetic drug cases?

RESPONSE: I share your concerns regarding synthetic drugs, which are highly dangerous, do not have known legitimate medical uses, and are not approved by the FDA. They pose a great danger to the public, especially children and teenagers. I understand that the DEA has been carefully monitoring the emergence of new synthetic drugs, and employs a broad range of measures to combat their use, including investigation and prosecution, administrative scheduling, and education and training for law enforcement, health professionals, and communities. If confirmed as Attorney General, I would welcome the opportunity to work with you and other Members of Congress if there is a need for additional legislation in this area.

7. Increase in Methamphetamine Seizures at the California-Mexico Border

In 2006, the *Combat Meth Epidemic Act*, which I authored, became law. This legislation requires precursor chemicals used to make methamphetamine, such as pseudoephedrine, to be sold behind the counter. This law has helped to effectively reduce the production of methamphetamine in the United States.

As a consequence of the increased difficulty of manufacturing in the U.S., production has shifted to Mexico, where transnational criminal organizations are producing increasing amounts of methamphetamine and smuggling it into the United States. These organizations are finding new and innovative ways to bring methamphetamine across the U.S. – Mexican border, including by liquefying it and by using drones.

It is my understanding that between 2009 and 2014, there was a 300 percent increase in seizures at the California ports of entry, and that methamphetamine seized in San Diego accounted for 63 percent of all methamphetamine seized at all ports of entry nationwide. I also understand that methamphetamine-related emergency room visits, deaths and arrests are on the rise in San Diego, as are prosecutions.

- Under your leadership, what steps will the Department of Justice take to counteract the

increase in methamphetamine smuggling from Mexico into California?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had the opportunity to study methamphetamine smuggling from Mexico into California, but I share your concerns and I agree that we must prevent illicit drugs from entering the United States. I know that DEA has a number of programs and partnerships with federal, state, and local law enforcement to address drug trafficking, including detecting, seizing, and cleaning up clandestine methamphetamine laboratories. If I am confirmed as Attorney General, I will support these partnerships and efforts to combat the proliferation of methamphetamine in the United States.

- Are there additional tools or resources that Congress can provide the Department with to ensure these dangerous substances don't continue to cross our borders?

RESPONSE: If I am confirmed as Attorney General, I would welcome the opportunity to work with you and other Members of Congress if there is a need for additional legislation.

8. Preventing Terrorists from Obtaining Guns and Explosives

I am very concerned that individuals with links to terrorism regularly purchase guns in the United States.

According to the Government Accountability Office, between February 2004 and December 2010, there were 1,453 cases in which a known or suspected terrorist — individuals who at the time were on federal terrorist watch lists — tried to buy a firearm or obtain a firearm or explosives license or permit. And in 91% of these cases — a total of 1,321 separate occasions — those known or suspected terrorists successfully passed a background check.

Now, here are three recent examples of terrorists who obtained and used firearms:

- The Kouachi brothers—the terrorists who killed 12 people at Charlie Hebdo in Paris—have been reported in the press to be on the U.S. no fly list.
- One of the alleged Boston Marathon bombers, Tamerlan Tsarnaev, was reportedly placed on two terrorist watch lists in 2011.
- And in 2009, Abdulhakim Mujahid Muhammad opened fire at a military recruiting station in Little Rock, Arkansas. He killed one and critically injured another.

In 2007, the Bush Administration's Justice Department drafted legislation to close this gap and prevent a known or suspected terrorist from buying a gun or explosive. In 2009, Attorney General Holder expressed the Obama Administration's support for this legislation.

- Do you believe it is important to give the Executive Branch the power to prevent a known or suspected terrorist from buying a gun or explosive?

RESPONSE: The executive branch has a number of effective mechanisms to contain any potential terror threat, including those from terrorists who seek to obtain firearms. Indeed, in my office, the Eastern District of New York—the United States Attorney's Office that has handled the most terrorism trials since 9/11—we have frequently employed firearm and explosives charges against terrorist suspects. I look forward to working with Congress if we determine that additional tools are needed to enhance our capacities, consistent with our commitment to civil liberties and national security.

9. Human Trafficking

As U.S. Attorney, you have prosecuted sex traffickers, and I applaud you for that work. However, I am concerned that the Department of Justice is not consistently prosecuting the buyers of sex acts involving children and other trafficking victims. For example, during Operation Cross Country, the FBI recovered over 100 child sex trafficking victims and arrested 281 traffickers. However, no buyers were reported arrested. As the State Department official who oversees anti-trafficking efforts noted, “[n]o girl or woman would be a victim of sex trafficking if there were no profits to be made from their exploitation.”

- Will you commit to me that, if confirmed, you will direct federal prosecutors to prosecute the buyers of sex acts involving children and other trafficking victims?

RESPONSE: Addressing the commercial sexual exploitation of children has been a top priority for me as the United States Attorney for the Eastern District of New York, as it has for the Department of Justice as a whole. I can assure you that it will be continue to be one of the Department's highest priorities if I am confirmed as Attorney General. The Department takes a comprehensive approach in its investigations and prosecutions that aims to apprehend the traffickers who supply the children and the customers who fuel the demand for the children, and, most importantly, to expeditiously remove child victims from an exploitative situation. Because deterring the demand for commercial sex with minors is an important tool in the fight to eradicate this industry, my District and others have successfully prosecuted numerous offenders who purchased or attempted to purchase sex with minors, and we will continue to do so if I am confirmed.

The website Backpage.com advertises “massages” and “escorts,” but is widely known to sell sexual services, including services involving adolescents who are under the age of 18. For example, in an undercover operation, the Cook County (Illinois) Sheriff's Office found that “100% of the women claiming to be massage therapists or platonic escorts on Backpage have accepted the offer of money for sex from our undercover male officers.” The Sheriff's Office concluded that Backpage is a “haven for pimps and sex solicitors who are victimizing women and girls for their own gain.”

The Department of Justice has prosecuted—and obtained guilty pleas from—a website similar to Backpage called myRedBook.com, using the Travel Act, money laundering statute, and “aiding and abetting” statute.

- Will you commit that, if confirmed as Attorney General, you will fully investigate

and, if the facts warrant prosecution, prosecute Backpage.com and any other website that sells the sexual services of children?

RESPONSE: As the United States Attorney for the Eastern District of New York, I share your grave concerns about the use of internet sites to facilitate human trafficking. If confirmed as Attorney General, I would ensure that the Department of Justice remains committed to pursuing those who use these websites to exploit minors and, more broadly, to preventing and responding to child sex trafficking, whether it takes place online or off.

10. Wildlife Trafficking

Wildlife trafficking is a global crime that is valued at \$8 to \$10 billion annually, making it one of the most lucrative types of organized crime in the world. There is also increasing evidence that wildlife trafficking is funding armed insurgencies like Al Shabaab, the Lord's Resistance Army, and the Janjaweed.

As importantly, wildlife trafficking is a morally repugnant practice that threatens some of our world's most iconic species with extinction. Poachers are slaughtering very young and juvenile elephants for their tusks due to the record high demand for ivory. Senator Graham and I have introduced a bill to increase penalties on wildlife traffickers. The bill thus supports the Administration's *National Strategy to Combat Wildlife Trafficking*, which called for "placing wildlife trafficking on an equal footing with other serious crimes."

- Could you describe why the Justice Department needs greater criminal penalties to successfully combat wildlife trafficking?

RESPONSE: Wildlife trafficking is a serious crime that threatens the survival of endangered species and undermines security across nations. We are increasingly seeing sophisticated criminal networks engaged in wildlife trafficking to generate illicit proceeds, which in turn bankroll further criminal activity. It is critically important that we have the necessary legal authorities to successfully investigate and prosecute wildlife trafficking and related crimes. We must deprive these networks their funding sources, which they use to fund other serious crime.

11. Gang Legislation

You have significant experience prosecuting drug, gang, and gun crimes. As you know, gangs continue to devastate many communities in California and across our country. The 2011 National Gang Threat Assessment found that gang membership increased by 40 percent between 2009 and 2011 and that "[g]angs are responsible for an average of 48 percent of violent crime in most jurisdictions and up to 90 percent in several others"

For nearly two decades, I have worked with Senator Hatch and others on legislation that would increase the tools that prosecutors have to prosecute gang members.

- If confirmed, will the Department of Justice vigorously enforce federal law against gang members and others who commit major drug or gun trafficking crimes?

RESPONSE: As a career prosecutor and United States Attorney, I know well the devastating effect gang violence can have on communities. I agree that the Department should continue to vigorously enforce all the federal laws at our disposal to address gangs and others who commit major drug, gun, and violent crimes. As a United States Attorney, this has been a priority for my Office, and if I am confirmed as Attorney General, it will continue to be one of my priorities.

- Does the Department need stronger tools to combat gangs?

RESPONSE: If I am confirmed as Attorney General, I would welcome the opportunity to work with you and other Members of Congress if there is a need for additional legislation.

12. Internet Gambling

I have long been concerned about Internet gambling. As you know, the FBI has concluded that online casinos are “vulnerable to a wide range of criminal schemes,” including money laundering and ventures by transnational organized crime groups. Furthermore, online gambling gives minors and addicts access to gambling with only a few clicks on a smartphone or computer.

In 2011, the Department reversed its long-standing interpretation of the Wire Act, concluding for the first time that the Act prohibited the use of the wires for gambling related to sporting events only. I believe a persuasive argument can be made that the Wire Act prohibits all Internet gambling.

- Will you commit to me that you will direct Department lawyers to re-examine the Office of Legal Counsel’s 2011 re-interpretation of the Wire Act?

RESPONSE: If confirmed as Attorney General, I will review the Office of Legal Counsel opinion, which considered whether interstate transmissions of wire communications that do not relate to a sporting event or contest fall within the scope of the Wire Act. It is my understanding, however, that OLC opinions are rarely reconsidered. If confirmed, I will read the opinion and if it articulates a reasonable interpretation of the law, I would welcome the opportunity to work with you and other Members of Congress to address concerns about online gambling through legislation.

13. Community Policing

Over the past several months, we have seen protests over the deaths of Michael Brown and Eric Garner turn violent. The pictures from Ferguson often show a line of heavily armed officers on one side, and protesters on the other.

To avoid these pictures in the future, I strongly believe that, as a country, we must reinvigorate community policing. I commend President Obama for creating a task force to examine how law enforcement can reduce crime while building public trust.

- If confirmed, will you use the influence you will have as Attorney General — including the grant funding the Department gives out — to encourage police chiefs, sheriffs, and other local law enforcement officers to engage in community policing?

RESPONSE: I believe that community policing is fundamental to strong, safe, and vibrant neighborhoods. The Attorney General has many tools at his or her disposal to advance community policing, including through the Department's Office of Community Oriented Policing (COPS). COPS advances community policing by funding the hiring of community policing professionals, and offering training, technical assistance and information resources to law enforcement, community members, and local government leaders. I understand that funding for COPS has been a priority for the Department under Attorney General Holder, and I would continue that commitment if I am confirmed.

- Will you make sure the voices of rank-and-file officers are included in the Department's work on this issue?

RESPONSE: Voices from every rank within a police department are important to the Department's work and I would ensure that all voices are heard and have a seat at the table during discussions about advancing community policing. I understand that the President's Task Force on 21st Century Policing has begun its work and is hearing testimony from a diverse group of stakeholders, including rank-and-file officers and police leadership. If confirmed as Attorney General, I look forward to reviewing the testimony and the Task Force's recommendations.

- In Los Angeles, I understand that the Simon Wiesenthal Center and the Museum of Tolerance have facilitated hundreds of sessions of training aimed at improving community policing and creating partnerships between police officers and the citizens that they protect. If confirmed, will you explore opportunities to work with organizations such as this one to strengthen the relationship between law enforcement and communities?

RESPONSE: It is important for the Department of Justice to explore opportunities to work with a variety of partners to develop and deliver effective training that strengthens relationships between law enforcement and the community. If confirmed as Attorney General, I would continue to explore all opportunities for partnership to advance community policing.

14. Crime Victims' Rights

For many years, former Senator Kyl and I pushed to provide victims of crime with a set of basic protections in the federal criminal justice system. The effort started in 1996, when we introduced a federal victims' rights amendment to the Constitution. We re-introduced the amendment in 1997, 1998, 1999, 2002, and 2003. Hearings were held in the Senate and House, and the Senate Judiciary Committee passed the measure three times.

However, it became clear that we did not have the 2/3 support needed to pass a constitutional amendment. So, in 2004, we turned our attention to passing a statute that protects victims' rights in the federal system. On October 30, 2004, we succeeded in enacting the Crime Victims' Rights Act.

The law gives victims of federal crimes eight specific rights. They are the right to:

- Be reasonably protected from the accused;
- Be given timely notice of any public court proceeding involving the accused;
- Not be excluded from any such public court proceeding;
- Be reasonably heard at any such public proceeding;
- Confer with the attorney for the Government in the case;
- Full and timely restitution;
- Proceedings free from unreasonable delay;
- Be treated with fairness and with respect for the victim's dignity and privacy.

Unfortunately, crime victims continue to have difficulty exercising their rights under the Crime Victims' Rights Act. A 2008 report by the Government Accountability Office (GAO) found that "[p]erceptions are mixed regarding the effect and efficacy of the implementation of the CVRA" For instance, the report suggests that victims are not always notified of a plea hearing because the prosecution team does not believe it is in their interest to have victims attend certain hearings.

Two cases demonstrate how victims' rights are not always respected:

First, in the *Antrobus* case out of Utah, Vanessa Quinn, who was murdered by Sulejman Talovic using a gun that was illegally sold to him by Mackenzie Hunter, was not recognized by the district court as a victim of Hunter's crime. As a result, Quinn's parents, the Antrobuses, were not allowed to deliver a victim impact statement at Hunter's sentencing, to receive restitution for unreimbursed funeral expenses, or to express their objections to the dismissal of one of the counts against Hunter. When the Antrobuses appealed, the Tenth Circuit applied a "clear and indisputable error" standard of review to the district court's ruling — not the ordinary appellate standard of review, which reviews questions of law *de novo* — and concluded that "[t]his is a difficult case, but we cannot say that the district court was clearly wrong in its conclusion."

Second, in a case named *In re Dean* concerning the BP oil spill, the 15 victims who were killed and more than 170 who were injured were denied the opportunity to consult with the

government regarding the likelihood that criminal charges would be filed and the details of a potential plea bargain. Notably, the Fifth Circuit concluded that the district court had “misapplied” the Crime Victims’ Rights Act and “should have fashioned a reasonable way to . . . ascertain the victims’ views on the possible details of a plea bargain.” However, the appellate court declined to uphold the victims’ rights because of the very deferential standard it applied to its review of the lower court’s ruling.

Now, I want to ask you a series of questions about specific steps you can take to better ensure that the Justice Department upholds victims’ rights:

- First, I have pushed legislation that would clarify that crime victims’ rights must be respected when a plea agreement or deferred prosecution agreement is reached before charges are filed. The Attorney General’s guidelines state that prosecutors should make “reasonable efforts” to consider victims’ views about prospective plea agreements, but consulting with victims is not required. Do you believe victims should have the right to be informed in a timely manner of a prospective plea agreement or deferred prosecution agreement, including before charges are filed?

RESPONSE: The Department is committed to ensuring victims a voice in all critical case decisions. Since 2011, the Attorney General Guidelines for Victim and Witness Assistance have made clear that the Department expects prosecutors to consult with victims regarding pleas, including those pre-charging, whenever is it appropriate to do so. The appropriateness of such consultation must take into consideration the defendant’s rights, the need for confidentiality, security concerns, and the practical considerations inherent in plea agreements that may be reached quickly or in cases with a large number of victims.

I believe in the full participation of victims in the criminal justice process and am committed to ensuring victims’ voices are heard. If I am confirmed as Attorney General, I will emphasize that the Department should continue to provide victims with their rights and to advocate on their behalf throughout the criminal process, from the first detection of the crime through any period of incarceration.

- Second, when victims are denied their rights in the trial court and appeal that denial, do you believe the appellate court should apply the ordinary standard of appellate review — legal error or abuse of discretion — or the more deferential “clear and indisputable error” standard?

RESPONSE: I recognize that courts have disagreed about the legal standards that apply under the law as currently written, but I also respect and understand that Congress is free to amend the statute to clarify its intentions. If I am confirmed as Attorney General, I would welcome the opportunity to work with you and other Members of Congress if there is a need for additional legislation.

- Finally, the 2008 GAO report made several recommendations for steps the Justice Department should take to support victims in exercising their rights. Will you review

the Department's response to these recommendations and report back to me on how these recommendations have been implemented?

RESPONSE: It is my understanding that since the 2008 GAO report, the Department has made efforts to implement its recommendations. If confirmed as Attorney General, I would look forward to learning more about these efforts and whether more should be done.

Senator Portman and I wrote to Attorney General Holder in December to point out a troubling new study by The Human Trafficking Pro Bono Legal Center. That study found that federal prosecutors did not request restitution in 37% of qualifying human trafficking cases studied that were brought between 2009 and 2012. When the prosecutor did not request restitution, it was granted in only 10% of cases. Overall, restitution was awarded in only 36% of cases.

- The law is clear that restitution shall be ordered for any trafficking offense. Why aren't prosecutors seeking restitution in every trafficking case?

RESPONSE: Securing restitution for trafficking victims is an essential part of the Department's victim-centered approach to trafficking investigations and prosecutions. Over the past two years, as the numbers of human trafficking prosecutions have risen to unprecedented levels, including record numbers of human trafficking cases filed in each of the past two years, and a cumulative forty-eight percent increase in the past four years, the Department has been actively strengthening the enforcement of the Trafficking Victims Protection Act's restitution provisions among federal prosecutors nationwide, including providing training for U.S. Attorneys' offices around the country.

- Will you commit to directing prosecutors to seek restitution for trafficking victims in every prosecution?

RESPONSE: If I am confirmed as Attorney General, I will pursue, to the greatest extent possible, restitution for victims of trafficking.

- Will you update the U.S. Attorneys' Manual to direct prosecutors to seek restitution and to seek restoration of forfeited assets when necessary to satisfy restitution orders?

RESPONSE: Please be assured that the Department is committed to seeking restitution in federal prosecutions, especially for the most vulnerable of victims. We look forward to continuing to secure significant restitution orders, as provided by law, and seeking justice for victims of human trafficking.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR FLAKE

1. As I mentioned in the hearing, I have concerns regarding the U.S. Attorney's Office for Arizona's recent order that pulls back on Operation Streamline's successful "zero tolerance" policy. I have a few follow up questions.

RESPONSE: I appreciate that this is an important matter of great concern to you, as you articulated in my courtesy visit with you and in a subsequent letter to me. I commit to you that if I am confirmed, I will learn more about Operation Streamline and will carefully consider the concerns you have shared with me.

- a. Do you believe that pulling back on a "zero tolerance" policy with regard to Operation Streamline will result in an increase or decrease in the number of illegal border crossers in the future?

RESPONSE: Public safety must be the paramount consideration in making prosecutorial decisions as they relate to the prosecution of undocumented aliens. As the United States Attorney for the Eastern District of New York, I have not stood in the shoes of the Southwestern Border United States Attorneys as they have set their priorities. While I have great confidence in those United States Attorneys, if confirmed as Attorney General, I will personally take a close look at the policies governing prosecution of illegal border crossers to ensure that those policies are best protecting the security of the United States and its citizens. If confirmed as Attorney General, I will work to ensure effective deportation and removal consequences for immigration violations.

- b. What do you believe will be the consequences of it becoming widely known that certain categories of offenders, such as first time border crossers without criminal histories, are not being prosecuted?

RESPONSE: If confirmed as Attorney General, I will prioritize public safety in the enforcement of federal immigration laws, including criminal immigration laws. The security of the United States and its citizens will always be my top priority. It is my understanding that the new removal priorities established by the Department of Homeland Security include recent border crossers and visa overstays who are ineligible for deferred action. As a result, it would not appear to be in anyone's interests to attempt to cross the border illegally at this time, as they would be a priority for removal. If confirmed as Attorney General, I will work to ensure effective deportation and removal consequences for immigration violations.

- c. Given your experience as a U.S. Attorney, do you believe that rolling back Operation Streamline and reducing prosecutions in the Yuma Sector, an area that

has shown a significant decrease in border crossings since the implementation of Operation Streamline, is prudent?

RESPONSE: I support effective deportation and removal consequences for immigration violations. I can assure you that if confirmed as Attorney General, I will take a close look at Operation Streamline, to ensure that the Department of Justice is pursuing effective policies that promote public safety in the enforcement of federal immigration laws, including criminal immigration laws. Public safety must be the paramount consideration in making prosecutorial decisions as it relates to the prosecution of undocumented aliens.

d. In your testimony, you mentioned budget constraints as one reason for possibly pulling back on Operation Streamline's "zero tolerance" policy. Do you commit to notify me of budgetary issues related to Operation Streamline, if that appears to be an impediment to continuing the "zero tolerance" policy?

RESPONSE: The security of the United States and its citizens will always be my top priority if I am confirmed as Attorney General. I share your concern that public safety not be jeopardized by budget challenges. If confirmed, I am committed to working closely with the Committee on budgetary issues related to the enforcement of immigration laws and other federal laws within the jurisdiction of the Department of Justice.

e. If you are confirmed, do you commit to provide specifics of the new Operation Streamline policy as well as any historical analysis done of the appropriateness of these changes given Operation Streamline's impact on recidivism?

RESPONSE: With regard to the prosecution of Improper Entry by Alien offenses, like other federal criminal cases, the USAOs formulate and implement district guidelines in the exercise of investigative and prosecutorial discretion, consistent with the Principles of Federal Prosecution. See United States Attorneys' Manual 9-27.000., http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/27mcrim.htm#9-27.001. I look forward to working with you, this Committee, and the United States Congress to provide the information you need regarding this policy to perform your critical oversight responsibilities, subject to the Department's long-standing law enforcement responsibilities.

f. In addition, if confirmed as Attorney General, will you support restoring Operation Streamline under a "zero tolerance" approach and removing the prohibition on prosecuting first time border crossers absent specific circumstances?

RESPONSE: As noted above, I support effective deportation and removal consequences for immigration violations. I can assure you that if confirmed as Attorney General, I will be committed to public safety in the enforcement of federal immigration laws, including criminal immigration laws. The security of the United States and its citizens will always be my top

priority. If confirmed, I will take a close look at the policies governing prosecution of illegal border crossers to ensure that they are best protecting the security of the United States and its citizens. I look forward to working with you and this Committee to ensure that we are effectively pursuing our shared goal of protecting the American people.

2. In your testimony, you stated that you are “not aware of how the [Department of Homeland Security] will actually go forward and implement by regulation [President Obama’s executive action].” Can you explain whether you believe, regardless of its constitutionality, that President Obama’s executive action must be implemented through the regulatory process? And, if so, what are the legal implications of not following that process?

RESPONSE: It is my understanding that the Department of Homeland Security has followed, or will follow, any applicable regulatory procedures with respect to the memoranda issued by the Secretary in November 2014.

3. I appreciate your commitment to ensure that Crime Victims Funds only be used to assist victims of crimes. In the January 13, 2015 memorandum that your office sent following up on your committee testimony, it is noted in the last paragraph the Department is “working on guidance that will minimize [the new law’s] impact.” It has been reported that the Department of Justice and the Office of Victims of Crime is considering a “pro-rata” solution that will partially shift the payment for victim advocates to non-Crime Victims Fund revenues. This would necessarily result in diminishing the services that are being provided to crime victims.
 - a. Will you commit to directing that victim advocates and supervisors be confined to serving the needs of crime victims?

RESPONSE: Although I am not in a position to comment upon any proposed guidance, I am committed to the implementation of the requirement in the Victims of Crime Act of 1984, as amended by the Victims of Child Abuse Act Reauthorization Act of 2013, as to the permissible use of the Crime Victims Fund.

4. Two weeks ago, the Department of Justice announced the criminal prosecution of three foreign terrorists who were charged for conspiring to kill U.S. soldiers who were fighting in Afghanistan and Iraq and providing material support to al-Qaeda. There are number of concerns with prosecuting these terrorists in Article 3 courts, including the safety of the proceedings, introduction and sharing of classified intelligence with these terrorists’ lawyers, and, if convicted, sending terrorists into U.S. prisons where they can recruit disaffected prisoners to their cause. Given your involvement in these cases as U.S. Attorney for the Eastern District of New York, where these cases are being prosecuted, I assume you have dealt with these issues.

- a. As the current U.S. Attorney for the Eastern District what did you do to mitigate these risks, and if confirmed as Attorney General, how do you plan on mitigating these risks in the future?

RESPONSE: While I cannot comment on the ongoing prosecution, I can say that appropriate steps are taken to ensure the security of the proceedings in my district, as well as to ensure that terrorists detained in our prisons are held securely and will not pose a threat to our citizens. From my firsthand experience as a United States Attorney, I can attest to the ability of our criminal justice system to serve as one effective tool, among many, to address the threat posed by terrorists and to gather valuable intelligence that aids in the disruption of terrorist organizations. The criminal justice system has proven in hundreds of terrorism cases since before 9/11 to be a swift, secure, and effective option to incapacitate terrorists, gain valuable intelligence, and ensure justice is served. The Classified Information Procedures Act (CIPA) has proven to be a valuable and effective tool to protect classified intelligence in Article III proceedings. While we must remain vigilant to the persistent risk of terrorist attack, I am confident that we can continue to prosecute terrorists in our courts and detain them in our prisons safely and securely.

5. Last Congress, a Constitutional amendment was proposed to enable government to limit funds contributed to candidates and funds spent by or in support of candidate's ability to influence elections. The text of the amendment reads as follows:

'Section 1. To advance democratic self-government and political equality, and to protect the integrity of government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.

'Section 2. Congress and the States shall have power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.

'Section 3. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.'

- a. Do you have any concerns with this amendment as drafted?

RESPONSE: Amendment of the United States Constitution is a very serious matter and requires very careful consideration of all of the potential effects that such an amendment could have, both now and in the future. An amendment that relates to political activity and speech, in particular, should be undertaken only after careful consideration of the potential effect on fundamental First Amendment freedoms of our citizens and the press.

I understand that the specific amendment proposed here is intended to advance important policy concerns regarding transparency in our campaign finance system and the prevention of corruption and the appearance of corruption. These concerns regarding the integrity of our

elections have long been validated by the Supreme Court, and any amendment of the Constitution requires careful and thorough consideration and balancing of these important interests.

- b. Would you agree with the ACLU, who has stated that “this and similar constitutional amendments would fundamentally break the Constitution and endanger civil rights and civil liberties for generations.”

RESPONSE: As described above, a Constitutional amendment that relates to political activity and speech, in particular, should be undertaken only after careful consideration of the potential effect on fundamental First Amendment freedoms of our citizens and the press.

6. The President made the unilateral decision to delay the Affordable Care Act’s employer mandate for one year despite clear statutory language instructing that the penalties associated with the mandate “shall apply 2 months beginning after December 31, 2013.” This is just one example of the President unilaterally making changes to the law. One report says that the President has made 28 unilateral changes to the Affordable Care Act.
 - a. Do you believe that President Obama had the authority to delay the Affordable Care Act’s employer mandate?

RESPONSE: I have not had an opportunity to review this issue in my position as a United States Attorney. It is my understanding that the Department of the Treasury has explained the legal basis for its determinations on this issue to Congress.

7. Exactly one year ago today, on February 5th, 2014, I submitted written question to Attorney General Holder following up on the Department of Justice oversight hearing that was held on January 29th, 2014. In order for Congress to effectively perform its oversight role, I believe there needs to be more timely responses to follow-up questions.
 - a. If you are confirmed as Attorney General, do you commit to respond to Congressional questions in a timelier manner?

RESPONSE: Yes. As I described in my testimony, I am committed to fostering a new and improved relationship with this Committee and Congress. If confirmed, I will ask my staff to review the Department’s processes for responding to congressional inquiries and questions for the record and to improve the Department’s response time.

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015

QUESTIONS FROM SENATOR FRANKEN

Question 1. The Computer Fraud and Abuse Act (CFAA) has received attention for its potentially harsh penalties. In 2013, I wrote a letter to the Department of Justice expressing my concern about the way in which Aaron Swartz was aggressively prosecuted under the CFAA, and associating myself with a similar letter by Senator Cornyn. The Department's response was, in short, that the prosecution of Swartz was consistent with the Act. Since then we have heard many people – from all over the political spectrum – call for reform of the CFAA. Recently, the White House announced a proposal to amend the Act. Some have characterized the proposal as a step in the wrong direction, noting – for example – that it would increase certain sentences. What is your assessment of these criticisms, and what is your opinion of the proposal?

RESPONSE: I believe that the Department of Justice has a responsibility to protect Americans from invasions of their privacy and security by prosecuting and deterring computer crimes. Accordingly, we must ensure that the CFAA, like all of our tools, remains up-to-date and reflects the changes in the way that cybercrimes are committed, changes that have occurred in the decades since it was first enacted. For example, I understand that the Administration's proposals include provisions designed to facilitate the prosecution of those who traffic in stolen American credit cards overseas, to enable the Department to dismantle botnets that victimize hundreds of thousands of computers at a time, and to deter the sale of criminal "spyware."

With respect to the sentencing provisions contained in those proposals, I believe it is appropriate to ensure that, in the event a defendant is convicted of a hacking offense, the sentencing court has the authority to impose a sentence that fits the crime. For example, the enormous harm caused by the massive thefts of Americans' personal financial data from retailers illustrates the need to ensure that the maximum sentences available are adequate to deter the worst offenders. As the level of harm caused by the worst cybercrimes increases, I support increasing the maximum penalties available to punish those crimes to a level commensurate with similar crimes, such as mail fraud or wire fraud.

It is also important to understand that these statutory *maximum* sentences do not control what sentence is appropriate for less significant offenses under the CFAA. In many criminal prosecutions, including prosecutions under the CFAA of all but the most serious offenses, the statutory maximum penalty has little or no impact on the sentencing of convicted defendants. Instead, in each case, prosecutors make individualized sentencing recommendations, and judges make individualized decisions, based on such factors as the facts of the case, the offender's history, and the U.S. Sentencing Guidelines.

Finally, I note that the Administration's 2015 proposal does not include any new mandatory *minimum* sentences, and I support the decision not to seek any such new sentences in the CFAA at this time.

Question 2. Last year, President Obama announced several reforms to the NSA's surveillance programs. This included a new policy that permits companies to release certain, limited information about the number of National Security Letters they receive annually. The Attorney General was authorized to set guidelines on this new transparency provision. I was pleased to see transparency measures included in the reforms. As I have often noted, I believe increased transparency is needed so that the public has the information it needs to make informed judgments about these programs.

Unfortunately, the guidelines that were issued only allow companies to disclose broad ranges of the number of National Security Letters they have received, and do not allow companies to say if they have received no letters whatsoever.

Last Congress, we failed by a close vote to reach cloture on the motion to proceed to the USA FREEDOM Act, a major NSA surveillance reform bill. The bill included strong government transparency provisions, which I was proud to write with Senator Heller. Those provisions promised to give the American people important information about the numbers of Americans who had their information collected by the government under the different surveillance laws, and they would have allowed companies to make more significant public disclosures. Will you commit to reviewing DOJ's transparency policies governing surveillance programs and consider issuing more robust guidelines?

RESPONSE: Although I have not had occasion as a United States Attorney to consider these questions, it is my understanding that the Administration supported the USA Freedom Act, and that the Department of Justice has played a significant role in enhancing the ability of companies to provide additional transparency. Should I be confirmed as Attorney General, I look forward to continuing the Department's efforts to enhance transparency to the greatest extent possible consistent with protecting our national security and to work with the Intelligence Community and Congress.

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015

QUESTIONS FROM SENATOR GRAHAM

On National Security

1. At your confirmation hearing, I asked you if you thought the U.S. is at war. You responded: "We are at war, Senator." I have two follow up questions:
 - a. Do you believe the U.S. is at war with radical Islam?
 - b. What makes up the battlefield in this war?

RESPONSE: It is my understanding that the United States is in an armed conflict with al-Qaida, the Taliban and associated forces. Although I have not had occasion as a United States Attorney to address the question, it is my understanding that pursuant to the 2001 AUMF, as informed by the laws of war, the United States has used military force against such organizations in areas of active hostilities, such as Afghanistan, and outside such areas in certain circumstances, consistent with other applicable domestic and international law.

2. Do you believe that, based on certain actions, a U.S. citizen can become an enemy combatant under the law of war?

RESPONSE: Although I have not had occasion to address the question in my role as a United States Attorney, my understanding is that whether an individual is an enemy combatant under the law of war depends on the particular circumstances. It is also my understanding that there are circumstances in which a U.S. citizen can become an enemy combatant under the law of war.

3. If a U.S. citizen joins an enemy force, does the U.S. have the legal authority to detain that citizen as an enemy combatant under the law of war?

RESPONSE: Although I have not had occasion to address that question in my role as a United States Attorney, my understanding is that whether an individual may be detained as an enemy combatant under the law of war depends on the particular circumstances. Based on my review of applicable Supreme Court precedent, the United States would have legal authority, in certain circumstances, to detain a U.S. citizen who has joined an enemy force as an enemy combatant under the law of war.

4. If a U.S. citizen joins an enemy force, does the U.S. have the legal authority to use lethal force against that citizen?

RESPONSE: Although I have not had occasion to address that question in my role as a United States Attorney, my understanding is that whether the United States has legal authority to use lethal force against a U.S. citizen who has joined an enemy force depends on the particular circumstances. I have seen the public version of the July 2010 memorandum in which the Office of Legal Counsel advised that, where certain conditions are met, the United States would have legal authority to use lethal force against a U.S. citizen who is a leader of Al Qaeda or associated forces—terrorist groups actively plotting against the United States and with which we are at war—and who poses an imminent threat of violent attack against the United States. Thus, in certain circumstances, the United States would have legal authority to use lethal force against a U.S. citizen who joins an enemy force.

5. Do you think that the Military Commissions system is a viable forum to prosecute non-U.S. citizen unlawful enemy belligerents captured on the battlefield?

RESPONSE: Yes, in certain circumstances a military commission could be a viable forum to prosecute such individuals. Should I be confirmed as Attorney General, I look forward to working with the military and the others in the executive branch to make the best determination about where each case should be brought. As I stated at the hearing, if terrorists threaten Americans here or abroad, they will face American justice. Should I be confirmed as Attorney General, I would continue to support the Executive Branch's strong practice of utilizing all of the tools in our arsenal. And that includes the military commission process.

6. Prior to this current conflict, can you give me a case in U.S. history where an unlawful enemy belligerent, caught on a foreign battlefield, was tried in U.S. civilian court?

RESPONSE: I am unaware of such cases, but have not had occasion to examine whether such a case has been brought.

7. Do you think that non-U.S. citizen unlawful enemy belligerents captured on foreign battlefields should be afforded the same constitutional protections as common criminals apprehended in the U.S.?

RESPONSE: It is my understanding that, in many circumstances, a non-U.S. citizen unlawful enemy belligerent captured on a foreign battlefield would not be entitled to constitutional protections. But as stated above and as I stated at the hearing, I would continue the strong practice of utilizing all of the tools in our arsenal to ensure that we effectively respond to terrorist threats and vindicate justice. Based on a careful analysis of options, the appropriate tool in a particular case could be a criminal prosecution by a United States Attorney's Office like the one I now proudly lead, which would be subject to certain constitutional protections. Or the

appropriate option could be a military commission trial, which I understand Congress crafted to satisfy the constitutional protections that might apply in that context.

On Online Gambling

1. On December 23, 2011, the Department's Office of Legal Counsel released an opinion holding that the Wire Act only prohibits online gambling as it relates to sporting events or contests, reversing the DOJ's long-held position that the Wire Act extends to all forms of gambling. Do you agree with this OLC opinion?

RESPONSE: If confirmed as Attorney General, I will review the Office of Legal Counsel opinion, which considered whether interstate transmissions of wire communications that do not relate to a sporting event or contest fall within the scope of the Wire Act. It is my understanding, however, that OLC opinions are rarely reconsidered. If confirmed, I will read the opinion and if it articulates a reasonable interpretation of the law, I would welcome the opportunity to work with you and other Members of Congress to address concerns about online gambling through legislation.

2. Do you believe the law is clear that the Wire Act extends only to sports bets or wagers?

RESPONSE: OLC concluded that the Wire Act does not extend to interstate transmissions of wire communications that do not relate to a sporting event or contest. As noted in my response to question 1, above, if confirmed I will review the opinion and determine whether I find OLC's interpretation of the statute to be reasonable.

3. In 2013, your office filed a civil forfeiture action which included as a predicate offense, the operation of gambling websites offering "casino games and sports betting" – websites your office claimed violate "multiple federal criminal statutes, including ... [the Wire Act] (making it unlawful to use a wire in connection with placing a bet or wager)"? *U.S. v. Two Million Eighty Thousand Dollars, et al.*, CV 13-2077 (E.D.N.Y. April 9, 2013).
 - a. If the law is clear that the Wire Act extends only to sports betting, why did your office not limit it to sports betting in its complaint, as quoted above?
 - b. On the other hand, if the law is not clear, was it appropriate for DOJ to overturn the law without consulting Congress, or seeking guidance from the courts?

RESPONSE: As alleged in the amended complaint, the civil forfeiture action, *United States v. Two Million Eighty Thousand Dollars, et al.*, CV 13-2077 (E.D.N.Y. April 9, 2013), arose from a joint state and federal investigation into an illegal sports bookmaking and money laundering enterprise with operations in Queens County, New York, and elsewhere. The criminal enterprise used bookmakers located in the United States to solicit and accept sports wagers for the placement of bets on off-shore Internet gambling websites. The proceeds seized in connection with the civil forfeiture action were exclusively the proceeds of sports gambling. The reference in the civil forfeiture complaint to "real money" casino games and sports betting" was taken

from one of the website's own description of the activities that it facilitated and was not a description of the predicate offense that the government asserted as the basis for the forfeiture.

The amended complaint alleged multiple bases for the forfeiture of the sports betting proceeds. In addition to the Wire Act offenses, the government alleged violations of 18 U.S.C. § 1955(a) (illegal gambling business) and 18 U.S.C § 1956 (money laundering). Notably, all of the funds forfeited thus far in this matter have been forfeited exclusively under 18 U.S.C. § 1955(d), which authorizes the forfeiture of property used in violation of the provisions of 18 U.S.C. § 1955(a).

4. The OLC lawyer who authored the opinion subsequently stated that "it is just that – an opinion." Does the opinion carry the force of law?

RESPONSE: It is my understanding that OLC opinions customarily are treated as authoritative by executive agencies. I am not aware of any statute or regulation that gives OLC opinions the force of law.

5. Do you think it was appropriate for OLC to effectively open the door for states to offer Internet gaming without the involvement of Congress, the public, law enforcement, and state and local officials?

RESPONSE: Pursuant to delegation, OLC exercises the Attorney General's authority to provide the President and executive agencies with advice on questions of law. Because OLC helps the President fulfill his constitutional obligation to take care that the law be faithfully executed, it is my understanding that the Office strives to provide an objective assessment of the law using traditional tools of statutory interpretation. These tools would not include seeking the views of Congress, the public, law enforcement, or state and local officials on a question of statutory interpretation.

6. At your confirmation hearing, you agreed that online gambling could be used as a way to finance terrorist organizations. If confirmed, would you suspend or revoke the OLC opinion to give you a chance to review it, and give you and Congress time to work together to clarify the law?

RESPONSE: As noted in my response to question 1, above, I will review the OLC opinion if confirmed as Attorney General. Unless in the course of my review I conclude that OLC's interpretation of the Wire Act is unreasonable, I do not intend to take any action to suspend or revoke the opinion. I would, of course, welcome the opportunity to work with you and other Members of Congress to address concerns about online gambling through legislation.

On Office of Justice Programs

DOJ's Office of Justice Programs (OJP) has consistently offered a competitive program for national organizations mentoring youth across America. This program defines national organization as those serving youth in at least 45 states.

- a. Does DOJ intend to change the criteria it currently uses under the Mentoring Program?
- b. If so, what impact would this change have on national organizations the Mentoring Program has helped fund to date?

RESPONSE: I am not aware whether OJP plans to make changes to the Mentoring Program. However, if confirmed as Attorney General, I look forward to working with OJP on any plans they may have to improve their programs, including changes to the eligibility criteria for the Mentoring Program. I understand that this program provides critical support to mentoring organizations and the youth they serve.

On Obscenity Laws

1. Do you believe the distribution and production of obscene material damages our communities?

RESPONSE: Obscenity is not protected by the First Amendment. I know that the Department focuses its limited investigative and prosecutorial resources on egregious cases that inflict the most damage on our communities, particularly those that facilitate child exploitation and cases involving the sexual abuse of children, including obscene depictions of child rape. For that reason, the significant majority of the federal obscenity cases the Department prosecutes involve the exploitation of children.

2. The federal obscenity laws, 18 U.S.C. §§ 1460-1470, have been largely unenforced under the Holder DOJ. These laws prohibit the distribution and production of obscene material, and provide heightened penalties for the distribution and production of obscene material related to minors. If confirmed, do you intend to enforce these laws?

RESPONSE: I understand that the Department has brought significant obscenity prosecutions in recent years, and remains committed to bringing obscenity cases where appropriate. As indicated above, the Department focuses its limited investigative and prosecutorial resources on egregious cases that inflict the most damage on our communities, particularly those that facilitate child exploitation and cases involving the sexual abuse of children, including obscene depictions of child rape.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM CHAIRMAN GRASSLEY

1. As you know, the Senate is constitutionally obligated to fulfill its duty to provide advice and consent on the President's nominees. That process is always lengthy and involved, for good reason. It is of course especially important for the Senate to fulfill its responsibilities with care for Cabinet level positions, such as the Attorney General of the United States. Nonetheless, throughout this process, my primary concern is not only that your nomination was thoroughly vetted by the Senate, but also that throughout the process you were treated fairly and with respect. I have publicly outlined the process going forward in the Committee. Do you believe the United States Senate, and in particular the Senate Judiciary Committee, has treated you and your nomination in a fair and appropriate way?

RESPONSE: Yes, and I would like to thank you in particular for the respectful and courteous way that you chaired my confirmation hearing.

2. Starting in 2010, the Department of Justice filed complaints against Arizona, Alabama, South Carolina, and Utah because of their pro-enforcement immigration laws. If confirmed, would you continue this policy of filing complaints against states that have passed such laws?

RESPONSE: I support efforts to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. If I am confirmed as Attorney General, I will continue the Department's efforts to work closely with the Department of Homeland Security and state and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws. I will also evaluate state enactments on a case-by-case basis pursuant to the Supreme Court's recent decision addressing this issue.

3. While the Department of Justice filed lawsuits against states that enacted pro-enforcement immigration laws, other cities enacted policies that expressly prohibited law enforcement from cooperating with the federal government on undocumented immigrant issues.
 - a. In your view, are sanctuary communities that ignore federal immigration detainers a threat to national security or public safety?
 - b. What steps would you take to encourage sanctuary communities to reverse their ordinances?

RESPONSE: As noted above, I support efforts to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. If I am confirmed as Attorney General, I will continue the Department's efforts to work closely with the Department of Homeland Security and state and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws.

4. While sanctuary communities refuse to cooperate with the federal government, they continue to collect money from DOJ grant programs. Would you instruct the Department of Justice to withhold grant money for sanctuary communities that refuse to comply with our immigration laws?

RESPONSE: The Department of Justice provides grants to communities for a variety of reasons, ranging from law enforcement personnel, law enforcement technology and equipment, and many forms of assistance for victims and at-risk youth. Any penalty for a community's failure to enforce U.S. immigration law must be balanced against the purpose for which it is receiving funds from the Department of Justice. As such, if I am confirmed as Attorney General, I would consider all options on how to respond to sanctuary communities.

5. The administration has acknowledged that over 36,000 convicted criminals were released from ICE custody in fiscal year 2013. Many of these criminals were guilty of heinous crimes, including homicide, sexual assault, abduction, and aggravated assault. Yet, Immigration and Customs Enforcement used its discretion and released these criminals back into the community. Do you believe the government, unless ordered by a court, should release convicted criminal aliens guilty of dangerous crimes, homicide, sexual assault, abduction, and aggravated assault?

RESPONSE: I believe that the government's removal efforts should be targeted at the most dangerous of the undocumented immigrants in this country, particularly those involved in terrorist activity, violent crime, gang activity, and those with criminal records. In the Eastern District of New York, we have frequently pursued federal criminal prosecutions of dangerous undocumented immigrants, prioritizing prosecution of those with a violent criminal record and those engaged in gang activity. Regarding the specific exercise of discretion by Immigration and Customs Enforcement (ICE), I believe that question is best directed to the Department of Homeland Security, which administers the immigration detention system and is responsible for determining whether to release particular aliens from its custody.

6. DHS cited the 2001 Supreme Court decision *Zadvydas v. Davis*, 533 U.S. 678 (2001), as another reason so many illegal aliens with criminal records were released. In *Zadvydas*, the court held that immigrants admitted to the United States who are subsequently ordered removed could not be detained for more than six months. Four years later, the Court extended this decision to people here illegally in *Clark v. Martinez*, 543 U.S. 371

(2005). Since *Zadvydas*, Congress has tried to pass legislation to require DHS to detain criminal aliens beyond six months. Would you support such legislation?

RESPONSE: If confirmed as Attorney General, I would welcome the opportunity to work with your office and any members of the Committee on legislation that would help to fix the problems in America's broken immigration system. This would include legislation that is both consistent with constitutional limits and designed to address the issues created by *Zadvydas*, including protecting the public from terrorists and criminal aliens who pose a threat to public safety.

7. The Fourth Circuit Court of Appeals issued a decision in 2014 that provides a loophole for violent gang members who are here illegally to remain in the United States. In *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014), Martinez appealed a Board of Immigration Appeals decision that denied him "withholding of removal" relief because he was a former member of the violent MS-13 gang in El Salvador. The Fourth Circuit reversed the decision holding that Martinez's former gang membership was "immutable" and met the "particular social group" element of the statute.
 - a. Do you agree that the Fourth Circuit decision creates a dangerous threat to national security?
 - b. After the Fourth Circuit handed down its decision, concern was expressed over the effect this decision could have on national security and public safety. Chairman Goodlatte of the House Judiciary Committee along with Representative J. Randy Forbes wrote a letter to Attorney General Holder to express their concern with the holding and ask whether he would appeal or seek review of the decision. However, Attorney General Holder did not appeal or seek review of this dangerous decision.
 - i. Would you agree that the DOJ, under Attorney General Holder, should have appealed the 4th circuit decision?
 - ii. Because the decision was not appealed, what, in your view, is the remedy for this problem?

RESPONSE: In my role as the United States Attorney for the Eastern District of New York, I was not involved with this case. It is my understanding that many factors go into the decision whether to seek review of a court of appeals decision. It is my further understanding that the Department continues to litigate this issue in other cases. If I am confirmed as Attorney General, I will work to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws.

8. The 287(g) program allows ICE to delegate some of its immigration enforcement authority to participating states. In 2012, ICE announced that it would no longer renew its 287(g) agreements stating, "other enforcement programs, including Secure Communities, are a more efficient use of resources." However, Secure Communities serves a completely different function. The 287(g) program trains local officers to determine whether a person is lawfully in the country, whereas Secure Communities only allows

local law enforcement to identify undocumented aliens after their incarceration. Secretary Johnson has announced that the Secure Communities program is being discontinued, and replaced by another program. Consequently, statutory authority exists for the administration to elicit state and local cooperation with the federal government; nevertheless, this administration refuses to use it.

- a. Do you support the 287(g) program, and similar programs, that authorize the federal government to allow states to participate in enforcing federal law?

RESPONSE: In my position as the United States Attorney for the Eastern District of New York, I have had no role in addressing ICE's implementation of the 287(g) program. I look forward to learning more about the 287(g) program and other ICE programs directed at public safety, if I am fortunate enough to be confirmed as Attorney General.

- b. In your opinion, should the 287(g) program be made available to local law enforcement agencies that want to protect their communities and participate in immigration enforcement?

RESPONSE: As indicated above, the 287(g) program is not one that I have had any role in implementing. The question appears to involve matters within the purview of the Department of Homeland Security and I am not in a position to respond further. I am committed, however, to fostering public safety through the enforcement of federal immigration laws and to working with federal and state law enforcement partners in continuing efforts to secure our borders and protect our national security.

- c. As states and local law enforcement approach you for help in enforcing federal law, will you find a way to work with them, or will you ignore them, as your predecessor has?

RESPONSE: I am committed to enhancing public safety through the enforcement of federal immigration laws and to working with federal and state law enforcement partners in continuing efforts to secure our borders and protect our national security.

9. In June 2014, DOJ announced its program Justice Americorp will issue \$2 million in grants to lawyers to represent unaccompanied minors who crossed the borders illegally. Under current law, there is no right to a lawyer in a removal proceeding. The law provides only that an immigrant may obtain a lawyer, "at no expense to the government." Do you agree that the statutory language is clear: the government may not provide a lawyer to immigrants in a removal proceeding at the expense of the taxpayers?

RESPONSE: As the United States Attorney for the Eastern District of New York, I am not familiar with the particulars of the Justice AmeriCorps program or with the statutory provision to

which your question refers. If I am confirmed as Attorney General, I look forward to learning more about this important issue.

10. By its very nature, Justice AmeriCorps has due process and equal protection issues. The Department is treating similar people in similar situations differently. How can the administration avoid due process and equal protection issues if it provides lawyers to some immigrants in removal proceedings, but not to others? Couldn't such a policy lead to the requirement of providing a lawyer to all immigrants in removal proceedings?

RESPONSE: As mentioned above, I am not personally familiar with any of the particulars of the Justice AmeriCorps program. If I am confirmed as Attorney General, however, I look forward to learning more about the program and the significant questions that you raise.

11. Immigration is a civil proceeding, and as a constitutional matter, the government is not required to provide counsel in civil proceedings. Are you concerned that if the government starts providing counsel to individuals in removal proceedings, the government could be required to provide counsel in other civil proceedings?

RESPONSE: I agree that the government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If I am confirmed as Attorney General, I look forward to learning more about this important issue.

12. ICE has brought removal charges against only 143,000 of the 585,000 removable aliens encountered in fiscal year 2014. That's a mere 24 percent of removable aliens that ICE encountered in 2014. What's even more troubling is that nearly 900,000 aliens who have final removal orders still remain in the country. Now, however, all people with final removal orders are encouraged to seek deferred action and other relief made available through the President's recent executive action.

- a. Do you support the administration's catch-and-release actions?
- b. Do you agree that individuals whom a judge has ordered removed, should, in fact, be removed?

RESPONSE: As United States Attorney, I have worked to enforce our nation's immigration laws. If I am confirmed as Attorney General, I would do the same, understanding that limited prosecutorial resources are best used to focus on the removal of criminals and those who pose a threat to the safety of our nation.

13. Does the U.S. Constitution confer a right to abortion? If so, what clauses confer that right?

RESPONSE: The Supreme Court has recognized that the Constitution protects the right of a woman to choose to terminate her pregnancy before viability, and to do so without undue influence from the government; the Court located this right primarily in the Due Process Clause of the Fourteenth Amendment. After viability, the Court has held that a State may restrict or even proscribe abortion except where the procedure is necessary to preserve the mother's life or health.

- a. Does the U.S. Constitution compel taxpayer funding of abortion? Why or why not?

RESPONSE: In my role as United States Attorney, I have not had occasion to become familiar with circumstances in which the Constitution could require taxpayer funding of abortion.

- b. Do you believe that the U.S. Constitution permits taxpayer funding of abortion? If so, based on what clause?

RESPONSE: In my role as United States Attorney, I have not had occasion to become familiar with circumstances in which the Constitution would permit taxpayer funding of abortion.

- c. Does the U.S. Constitution prohibit informed-consent and parental involvement provisions for abortion? Why or why not?

RESPONSE: In my role as United States Attorney, I have not had occasion to become familiar with the constitutionality of informed-consent and parental involvement provisions for abortion.

14. In your view, is diversity a valid institutional interest for a government entity, consistent with the Equal Protection Clause? What other compelling justifications exist for government to make racial distinctions?

RESPONSE: The Supreme Court has recognized that diversity can be one factor considered in certain governmental decision-making, such as academic admissions decisions. At the same time, the Department of Justice must use its enforcement authority to ensure that equal opportunities are available to all citizens without artificial barriers to those opportunities.

15. In *McCutcheon v. FEC*, Justice Breyer's dissenting opinion stated that "the First Amendment advances not only the individual's right to engage in political speech, but also the public's interest in preserving a democratic order in which collective speech matters" (emphasis in original).

- a. Do you agree that the First Amendment protects "collective" rights as well as individual rights?

b. If so, what other collective rights does the Bill of Rights protect?

RESPONSE: I understand Justice Breyer, in this excerpt, to be addressing the importance of an open and public forum in our representative democracy. I have not had the opportunity to delve into the academic debate about whether certain constitutional rights are individual or collective. There undoubtedly are certain rights that are fundamental to our democracy that can only be meaningfully exercised with other people, such as the right to assemble and other associational rights.

16. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that a right to assisted suicide was not protected by the Due Process Clause. The Court reasoned: “[W]e have always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this uncharted area are scarce and open-ended. By extending constitutional protection to an asserted right or liberty interest, we, to a greater extent, place the matter outside the arena of public debate and legislative action. We must therefore ‘exercise the utmost care whenever we are asked to break new ground in this field,’ lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the members of this Court.” Do you agree with the Court’s assessment of the importance of public debate and legislative action?

RESPONSE: I believe firmly in the importance and value of public debate concerning difficult and fundamental questions that may arise under our Constitution.

17. Do you believe that the Supreme Court’s decision in *Morrison v. Olson*, which ruled that the independent-counsel statute did not violate the constitutional separation of powers, was correctly decided? Please explain.

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to reach a considered view on whether *Morrison v. Olson* was correctly decided. I support and follow the Supreme Court’s binding decisions now as the law of the land, and if confirmed, I would continue to do so as Attorney General.

18. Do you believe that the Supreme Court’s decision in *Boumediene v. Bush*, which conferred constitutional habeas rights to aliens detained as enemy combatants at Guantanamo, was correctly decided? If so, how does that square with *Johnson v. Eisentrager*, which Justice Scalia, in his *Boumediene* dissent, said “held—held beyond any doubt—that the Constitution does not ensure habeas for aliens held by the United States in areas over which our Government is not sovereign”?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to reach a considered view on whether *Boumediene v. Bush* was correctly decided. I support and follow the Supreme Court’s binding decisions now as the law of the land, and if confirmed, I would continue to do so as Attorney General.

19. What is your understanding of the constitutional duty of the Executive to “take Care that the Laws be faithfully executed” as contained in Article II, sec. 3 of the U.S. Constitution?

RESPONSE: The President has the constitutional obligation to take care that the Constitution and laws of the United States are faithfully executed by the Executive Branch.

20. Do you believe that the Supreme Court’s decision in *Zelman v. Simmons-Harris*, which held that school-choice programs that include religious schools do not violate the Establishment Clause, was correctly decided? Please explain.

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to reach a considered view on whether *Zelman v. Simmons-Harris* was correctly decided. I support and follow the Supreme Court’s binding decisions now as the law of the land, and if confirmed, I would continue to do so as Attorney General.

21. The Supreme Court has held that the Federal Sentencing Guidelines are advisory and persuasive, but not binding. Do you believe *Booker* and *Fanfan* were correctly decided?

RESPONSE: As indicated above, I support and follow the Supreme Court’s binding decisions now as the law of the land, and if confirmed, I would continue to do so as Attorney General.

22. The U.S. Supreme Court has repeatedly upheld obscenity laws against First Amendment challenges. To my knowledge, not one new adult obscenity case has been initiated against commercial distributors of hard core adult pornography during the Holder years. Research has linked the consumption of obscenity to sexual exploitation and violence against women, and to demand for sex trafficking and child pornography. If confirmed, what is your commitment to vigorously enforcing the federal adult obscenity laws?

RESPONSE: I agree that obscenity is not protected by the First Amendment. My understanding is that the Department has brought significant obscenity prosecutions in recent years, and I look forward to ensuring that the Department remains committed to bringing obscenity cases where appropriate.

23. Do you think that it is constitutional for a university to have racially exclusive internships or scholarships or summer programs, as some have in the past? My question goes not go to racially preferential programs, but ones in which a person cannot even apply based on their color. The Supreme Court held in the *Grutter* and *Gratz* cases that schools cannot use race mechanically, but must give “individualized consideration” to students. How can a racially exclusive program provide students with individualized considerations?

RESPONSE: In *Grutter*, the Supreme Court ruled that a university has a compelling interest in achieving diversity and can take steps to lawfully pursue that interest. Scholarship and other support programs can play an important role in promoting and sustaining a diverse student body, by helping to retain students who may need financial assistance or additional assistance in academic or other areas to succeed. I am not in a position to comment generally on the steps that a university may take to achieve diversity; as the Supreme Court noted in *Grutter*, context matters. However, I share your concern that all university programs, including scholarship and other support programs, be administered in a manner consistent with the Constitution and the laws of our nation.

24. Do you believe racial profiling in the context of the War on Terrorism is unconstitutional?

RESPONSE: National security is of utmost importance to the Department, the nation, and to me. Federal law enforcement has used, and will continue to use, every legitimate tool to keep the nation safe. The Constitution guides the Department's activities in the use of all of its tools and protects individuals against the invidious use of irrelevant individual characteristics.

25. In his opening statement at the confirmation hearing of Alberto Gonzalez to be Attorney General, Senator Leahy remarked, "The Attorney General is about being a forceful, independent voice in our continuing quest for justice and in defense of the constitutional rights of every single American."

a. Do you believe the Attorney General should be a forceful, independent voice for justice and in defense of the constitutional rights of all Americans? If so, how do you intend to accomplish this?

RESPONSE: I agree that the Attorney General must be a forceful, independent voice of justice and a fierce defender of the constitutional rights of all Americans. I have devoted my professional life to the pursuit of justice and the defense of the ideals and principles set forth in the Constitution of the United States of America. If I am confirmed as Attorney General, I pledge to Congress and the American people that the Constitution—the bedrock of our system of justice—will be my lodestar as I exercise the power and responsibility of that position. I will never forget that I serve the American people from every walk of life.

b. Can you provide examples of how you have been an independent voice during your government service? Are there any examples from your private practice?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have been entrusted with a profound duty to bring independence and integrity to every investigation and prosecution and exercise the significant authority of the office completely free of bias, fear, or favor. My record demonstrates my unwavering commitment to fulfilling that duty. In the field

of public corruption, for example, my Office has never hesitated to pursue investigations and prosecutions of corrupt public officials, no matter how powerful they might be. Under my leadership, the Office has pursued corruption taking place in offices and backrooms in New York's City Hall, the Nassau County legislature, the Capitol building in Albany, and even Washington, DC. Our prosecutions have resulted in convictions of Democrats and Republicans alike, including a sitting United States Congressman, the New York State Senate's Majority and Minority leaders, and officials from every level of government. If I am fortunate enough to be confirmed, I will bring that same steadfast commitment to independence and integrity to the position of Attorney General.

You also asked me about any examples from my time in the private sector where I was able to provide an independent voice. In 2005, I was appointed Special Counsel in the Office of the Prosecutor for the International Criminal Tribunal for Rwanda (ICTR), for the express purpose of conducting an independent, sensitive investigation into allegations of witness interference and perjury in one of their cases. I interviewed numerous genocide survivors who witnessed and managed to live through unimaginable atrocities as part of my investigation in order to make impartial recommendations to the ICTR Prosecutor. This opportunity to provide independent scrutiny necessary to ensure the rule of law and the integrity of the court system was one of the most meaningful experiences of my professional life.

26. The Affordable Care Act states that the employer mandate applied "after December 31, 2013." Notwithstanding this clear statutory command, the President postponed the employer mandate. Furthermore, according to the Wall Street Journal, the President has delayed aspects of the law some 38 times.

Under our Constitution, the President must take care that the laws are faithfully executed. He can decide how to enforce the laws, but not whether to enforce them. What are the outer limits of the President's authority to suspend, alter or otherwise change statutory language? What's the limiting principle?

RESPONSE: Under our system of separated powers, it is the President's obligation to take care that the laws be faithfully executed, and he cannot abdicate his responsibility to enforce duly-enacted law. Nor can he, consistent with the Constitution and its allocation of powers between the two branches, attempt to, in effect, legislate or to rewrite laws under the pretense of exercising his enforcement discretion.

27. The President offered no legal support when he delayed the employer mandate despite the law. It is not clear if the Office of Legal Counsel did not review his action or could not offer legal support for it. In the Justice Department under Attorney General Holder, the Office of Legal Counsel has lost its former role as a guarantor that presidential acts are legal. Either it is not consulted, or the President takes action without seeking its approval, or the Office will not say "no" to illegal actions, or it issues cursory approvals like it did with an email when the President unilaterally released 5 terrorists from Guantanamo. Any of these possibilities is a threat to the rule of law.

What will you do to ensure that office objectively and thoroughly evaluates proposed presidential actions before they occur so the President conforms to the laws and the Constitution?

RESPONSE: If confirmed as Attorney General, it is my intention to meet regularly with the Office of Legal Counsel. In the course of those meetings, I would make clear my expectation that the Office provide soundly reasoned, candid, and objective assessments of the law.

28. In 2008, the Justice Department brought suit against the New Black Panther Party and two of its members for voter intimidation. The defendants did not contest the claims. But when the Obama Administration took over, they would not allow career litigators to move for a default judgment. The career litigators have stated that political appointees would not allow a case to be brought against Black citizens for intimidation of White voters. Internal investigations of misconduct have led nowhere after all these years. The Civil Rights Commission has criticized the Department for not cooperating with its investigation into the matter.

- a. If confirmed, will you conduct a thorough and fair investigation of this matter and apply any appropriate disciplinary action?

RESPONSE: I am not personally familiar with the details of this case. My general understanding is that there have been extensive internal Department reviews of this case, but I am not personally familiar with those reviews or their outcome. If I am confirmed as Attorney General, I will ensure there has been a fair and impartial consideration of the results of those internal reviews, and will take any appropriate action based on that consideration.

- b. Is it your position that the Voting Rights Act applies in a race neutral way to voter intimidation?

RESPONSE: If I am confirmed as Attorney General, I am committed to enforcing all the federal laws within the Department's jurisdiction, including the Voting Rights Act, according to their specific terms and applicable case law, in an even-handed manner.

29. The President remarked in his State of the Union address that voting should be as easy as possible. But fraud exists and it will get worse if the only response is denial. Not long ago, the Pew Center on the States issued a report that found there are 24 million voter registrations in this country that are no longer valid or are inaccurate. It concluded that there are almost 3 million individuals who are registered to vote in multiple states. Tens of thousands are registered to vote in three or more states.

The study also identified close to 2 million dead people on the voter rolls. NBC News found 25,000 names of likely deceased voters on the California rolls. Some voted years

after they died. One woman who died in 2004 voted in 2008 and 2012. A man who died in 2001 has voted eight times since 2005. The New York Times has written that in Florida, “absentee ballot scandals seem to arrive like clockwork....”

Do you agree that voter fraud is a significant problem? Do you agree that the states should be allowed to take actions, such as requiring voters to show photo identification, especially when there is no charge for obtaining that identification, to ensure the integrity of the voting process without running afoul of the Justice Department’s Civil Rights Division?

RESPONSE: I am not personally familiar with the specifics of any studies regarding these issues, nor do I have any categorical views on these issues in the abstract. My general understanding is that the Department considers questions of the validity of voting practices, such as state voter identification laws, based on the particular requirements of the federal law being enforced, based on the particular facts of the practice being investigated, and based on the particular laws and facts in the jurisdiction.

As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

The analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

I would also note that the Department of Justice has a number of important law enforcement responsibilities in this area. These responsibilities include investigating and prosecuting violations of the federal criminal laws, such as election frauds that violate the federal criminal statutes. These responsibilities also include investigating and bringing suit to prevent violations of the federal voting rights laws. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department’s jurisdiction, including the federal criminal laws that criminalize various types of election fraud, and the federal voting rights laws such as the Voting Rights Act, according to their terms, in a fair and even-handed manner.

30. Voter fraud also includes the registration to vote and illegal voting by people who are ineligible to vote. That means that the right to vote is being diluted by illegal votes canceling legal ones. In Iowa, a state investigation from 2012 to 2014 identified 117 illegal votes that were cast. The Secretary of State’s investigation of these cases resulted in 27 criminal charges against suspected fraudulent voters and six criminal convictions. The three categories of illegal votes cast were from non-citizens, felons whose right to vote had not been restored, and miscellaneous offenses. Investigators were careful and determined that about half of the suspected non-citizen voters were actually citizens. But

88 cases were turned over to county attorneys and at least 10 of these cases have resulted in charges. The evidence of care in the investigation was demonstrated in the 16 cases brought against felons whose right to vote had not been restored, while 20 felons were identified whose rights should have been restored but had been denied when trying to vote. And there were 100 instances in which voters in Iowa also cast ballots in the same election in another state.

There is much voter fraud if only election and law enforcement officials will actually seek it. That many prosecutors do not search for it does not mean it does not exist. The public needs confidence in the integrity of its elections, and that only eligible voters actually vote.

If you are confirmed, what would you plan to do to stop voter fraud?

RESPONSE: As noted above, one of the important responsibilities of the Department of Justice is to investigate and prosecute violations of the federal criminal laws, including those federal laws that criminalize various types of election fraud. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department's jurisdiction, including the federal criminal laws regarding election fraud, according to their terms, in a fair and even-handed manner.

31. The Obama Administration has sought to ban the importation of shotguns and ammunition. The Administration has even argued that shotguns lack any sporting purpose.

a. Do you agree that shotguns do not have any sporting purpose and that their importation should be banned?

RESPONSE: I am not aware of any statement that "shotguns lack any sporting purpose." Shotguns have long been used in shooting and hunting sports, and my understanding is that numerous shotguns may be lawfully imported under federal law.

b. Federal law requires the attorney general to determine whether or not certain types of firearms have a "sporting purpose" before they can be lawfully imported or sold. How is this consistent with the core purpose of the Second Amendment, which, according to the U.S. Supreme Court, is self-defense?

RESPONSE: The Supreme Court has made clear that the Second Amendment protects the individual right of law-abiding citizens to keep and bear arms for self-defense in the home. To my knowledge, the Court has not opined on the constitutionality of the federal law with regard to firearm importation. If confirmed, I will ensure that the actions of the Department of Justice are consistent with the Constitution, including the Second Amendment.

32. The Justice Department is tasked with maintaining two important criminal databases. One is used when a Brady Act criminal background check is conducted on a prospective gun purchaser. The other is used by employers to check the criminal history of job applicants they intend to hire. These databases depend on records provided by the states that reflect criminal cases. Both databases have inaccuracies that cause serious problems. For instance, people convicted of domestic violence aren't allowed to purchase firearms. But many states have submitted none or very few records of such convictions. A background check for someone from these states won't keep a convicted domestic abuser from buying a gun.

Similarly, states have done a poor job with the records that are used for employment checks. Today, 32% of adult Americans have a criminal record, either a conviction or an arrest. The database contains many arrests that never led to any conviction. But when a search is done, those arrests come up, and the person may be denied a job as a result. If confirmed, what will you do to improve the accuracy of the records in these databases?

RESPONSE: I agree that it is important for databases that contain criminal records to be accurate for purposes of conducting background checks. Although in my capacity as the United States Attorney for the Eastern District of New York I have not studied this issue in detail, if confirmed as Attorney General, I would support efforts to improve and ensure accuracy of criminal records, particularly those records used in background checks by employers and for firearms purchases.

33. One of the bills proposed in Congress and in a number of states would expand existing background check requirements that currently pertain to licensed retail sales of firearms to all firearm transfers. If such a bill were enacted, how would DOJ enforce it in the majority of states where firearms are not licensed or registered to specific individuals?

RESPONSE: I am not familiar with the details of the proposed legislation you reference, but if confirmed I would work to enforce all legislation passed by Congress, consistent with the authorities provided by that legislation and the Department's resources.

34. Do you believe the Supreme Court correctly decided *District of Columbia v. Heller*? Do you believe the individual right to keep and bear arms is a fundamental right?

RESPONSE: The Supreme Court has made clear that the Second Amendment protects the individual right of law-abiding citizens to keep and bear arms for self-defense in the home. If I am confirmed as Attorney General, I will ensure that the actions of the Department of Justice are consistent with the Constitution, including the Second Amendment.

35. The Supreme Court held in *Heller* that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." In 2009, the U.S. Supreme Court expanded that right in *McDonald v. Chicago* by finding that the Due Process Clause of the Fourteenth Amendment incorporated the Second

Amendment. What is your personal opinion of the rights afforded by the Second Amendment?

RESPONSE: As noted above, the Supreme Court has made clear that the Second Amendment protects the individual right of law-abiding citizens to keep and bear arms for self-defense in the home. If I am confirmed as Attorney General, I will ensure that the actions of the Department of Justice are consistent with the Constitution, including the Second Amendment.

36. A bipartisan consensus is growing in Congress that civil asset forfeiture has increased incentives for abuse. In that process, law enforcement can seize property without any finding that the person has committed a crime. And financial incentives exist for law enforcement to pursue asset forfeiture aggressively—maybe too aggressively.

Recently, Attorney General Holder accepted the proposal that I and several members of Congress asked of him: to eliminate adoptive seizures and equitable sharing. Under those procedures, state and local law enforcement had incentives to pursue seizures to keep the money for their own use. However, Attorney General Holder's order still permits equitable sharing when state and local authorities work with federal law enforcement in a joint task force, and in joint federal-state operations.

I do not read these exceptions as narrowly as you characterized them at the hearing. For instance, I am not aware that an actual case must be filed for them to apply.

- a. Haven't a large number of investigations in your office been conducted through a joint task force or joint federal-state operation? And doesn't the exception for equitable sharing for these operations swallow this rule? What would happen if a state law enforcement officer saw a car that it suspected had cash obtained from drug trafficking and called a DEA agent, asking whether the local agency and DOJ jointly combated drugs?
- b. Are further reforms necessary for asset forfeiture, and will you commit to working to supporting legislation to prevent injustice and enhance procedural rights in this area?

RESPONSE: I understand that following the issuance of the Attorney General Holder's January 16, 2015, policy generally prohibiting the practice of federal adoptions of assets seized by state and local law enforcement, the Department has been engaged in extensive communication with both federal and state and local law enforcement about implementation of the new policy. I expect that if the Department determines that further guidance is necessary, including to clarify circumstances that constitute joint investigations or joint task forces, it will respond accordingly.

The adoption order came as a result of the Department's comprehensive review of all aspects of the Asset Forfeiture Program. The goal of this review, as I understand it, is to ensure that federal asset forfeiture authorities are used effectively and appropriately to take the profit out of crime and return assets to victims, while safeguarding civil liberties and the rule of law. If confirmed as Attorney General, I look forward to ensuring that this review is thoughtfully and thoroughly undertaken and to working with Congress on these issues.

37. The Justice Department did not, in the words of the New York Times, “prosecute a single prominent banker or firm in connection with the subprime mortgage crisis that nearly destroyed the economy.” I am concerned that this will happen again if DOJ does not hold the perpetrators responsible. Many people were prosecuted in connection with the failed savings and loan scandals of the 1990s.

- a. Why did the Department of Justice fail in bringing these criminals to Justice? Do you believe this impedes its ability to credibly deter others from committing similar crimes in the future?
- b. If confirmed, what will you do to pursue prosecution for any of these crimes that are still within the statute of limitations?

RESPONSE: If confirmed, I intend to vigorously pursue perpetrators of fraud and financial abuse, including, where appropriate, by prosecuting crimes related to the 2008 financial crisis. It is important to note, however, that criminal prosecution is not the only available means to seek redress for financial improprieties. Not every case can, or should, be resolved through criminal prosecution, as, for example, in cases where the evidence does not meet the high burden of proving criminality beyond a reasonable doubt. In these instances, the Department may be able to pursue civil remedies, as it has in multiple cases involving fraud in the sale of residential mortgage backed securities, reaching record settlements that, among other provisions, have extended consumer relief to those hurt most by the financial crisis.

I know from experience that making full use of civil remedies, including redress under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), is an effective means of tackling financial abuses. For example, my office led the investigation into Bank of America that resulted in a historic settlement which included the payment of \$16.65 billion for financial fraud leading up to and during the financial crisis. That was the largest civil settlement with a single entity in American history and resolved federal and state claims against Bank of America and its former and current subsidiaries, including Countrywide Financial Corporation and Merrill Lynch. In addition to a record penalty, Bank of America agreed to provide billions of dollars of relief to struggling homeowners, including funds that will help defray tax liability as a result of mortgage modification, forbearance or forgiveness. The settlement did not release individuals from civil charges, nor did it absolve Bank of America, its current or former subsidiaries and affiliates or any individuals from potential criminal prosecution.

As another example, my office also participated in an investigation that resulted in a \$7 billion global settlement with Citigroup for misleading investors about residential mortgage backed securities containing toxic mortgages. That settlement included a \$4 billion civil penalty—at the time, the largest penalty at the time under FIRREA. The resolution also required Citigroup to provide relief to underwater homeowners, distressed borrowers, and affected communities through a variety of means including financing affordable rental housing developments for low-income families in high-cost areas. The settlement did not absolve Citigroup or its employees from facing any possible criminal charges, nor did it release any individuals from civil liability.

In short, I am committed to using all of the Department's enforcement tools, whether civil or criminal, and to working with all of our partners, whether federal, state, local, tribal, territorial, or foreign, to combat fraud and financial abuse. I am confident that we will succeed in restoring the integrity of our markets, preserving taxpayers' resources, and protecting the vast majority of hardworking Americans, investors, and businesses who play by the rules and adhere to the law.

38. As United States Attorney for the Eastern District of New York, you helped secure nearly \$2 billion from HSBC over its failure to establish proper procedures to prevent money laundering by drug cartels and terrorists. You were quoted in a DOJ press release saying, "HSBC's blatant failure to implement proper anti-money laundering controls facilitated the laundering of at least \$881 million in drug proceeds through the U.S. financial system."

You stated that the bank's "willful flouting of U.S. sanctions laws and regulations resulted in the processing of hundreds of millions of dollars in [Office of Foreign Assets Control]-prohibited transactions." Still, no criminal penalties have been assessed for any executive who may have been involved.

- a. Did you make any decision or recommendation on charging any individual with a crime?
 - i. If so, please describe any and all decisions or recommendations you made.
 - ii. Please explain why such decisions or recommendations were made.
- b. If you did not make any decision or recommendation on charging any individual with a crime, who made the decision not to prosecute?

RESPONSE: On December 11, 2012, the Department filed an information charging HSBC Bank USA with violations of the Bank Secrecy Act and HSBC Holdings with violating U.S. economic sanctions (the two entities are collectively referred to as "HSBC"). Pursuant to a deferred prosecution agreement ("DPA"), HSBC admitted its wrongdoing, agreed to forfeit \$1.256 billion, and agreed to implement significant remedial measures, including, among other things, to follow the highest global anti-money laundering standards in all jurisdictions in which it operates. As the United States District Judge who approved the deferred prosecution found, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for it accomplishes a great deal." Although grand jury secrecy rules prevent me from discussing the facts involving any individual or entity against whom we decided not to bring criminal charges, as I do in all cases in which I am involved, I and the dedicated career prosecutors handling the investigation carefully considered whether there was sufficient admissible evidence to prosecute an individual and whether such a prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney's Manual.

I want to reiterate, particularly in the context of recent media reports regarding the release of HSBC files pertaining to its tax clients, that the Deferred Prosecution Agreement reached with HSBC addresses only the charges filed in the criminal information, which are limited to

violations of the Bank Secrecy Act for failures to maintain an adequate anti-money laundering program and for sanctions violations. The DPA explicitly does not provide any protection against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA explicitly mentions that the agreement does not bind the Department's Tax Division, nor the Fraud Section of the Criminal Division.

39. Recent press reports have tracked the disturbingly large numbers of witnesses in federal criminal cases who have been murdered to prevent their testimony. It is often difficult to get witnesses to testify against dangerous criminals. They rightly fear for their safety and the Justice Department has to ensure they are protected.

I know that sometimes witnesses decline protection. And sometimes protected witnesses ignore sound advice to stay away from their former residences to avoid the defendant and others. But it is clear that the Department is not offering protection to quite a few witnesses who need it.

And I am particularly incensed that on several occasions, when the Department has confidentially informed defense counsel in advance of trial who a witness will be, defense counsel have tipped off their client, who then appear to arrange for the witness to be murdered.

If confirmed, what will you do as Attorney General to make sure that witnesses who need protection receive it? Will you ensure that federal prosecutors seek protective orders to relieve them of the obligation of disclosing the names of vulnerable witnesses to defense counsel?

RESPONSE: As United States Attorney for the Eastern District of New York, I am deeply familiar with the challenges associated with ensuring both the cooperation and safety of witnesses in federal prosecutions—particularly prosecutions of violent offenders and organized crime defendants. I also am familiar with the various tools that the Department may use, including but not limited to participation in the Witness Security Program or other relocation assistance, to ensure the safety of witnesses and their family members. Effective use of those tools has been a critical component in my Office's historic and groundbreaking convictions of the leaders of the five La Cosa Nostra families in New York City and numerous ultra-violent gangs. If confirmed as Attorney General, I will support the continued use of these tools. I also will work with federal prosecutors to ensure that the Department both meets its discovery obligations and protects witnesses from retaliation by seeking protective orders to safeguard the identities of witnesses, where appropriate.

40. Increasingly, law enforcement is using drones for domestic law enforcement purposes. Drones enable more surveillance of citizens to occur. They are more mobile. They are cheaper to pay than police officers. And they can hover over homes and peer through windows, observing what humans cannot.

I am concerned that as law enforcement employs more drones, the security of the people in their persons, papers, and effects could be compromised. Meanwhile, despite a hearing the Judiciary Committee held, the Justice Department has not issued any guidelines on how the Fourth Amendment's prohibition on unreasonable searches and seizures, and its warrant requirement, apply to drones.

If confirmed, will you commit that the Department of Justice will issue specific guidelines on how the Fourth Amendment restricts law enforcement's domestic use of drones?

RESPONSE: I understand that the Department currently uses unmanned aircraft systems (UAS) in limited circumstances and only when there is a specific operational need. If confirmed, I will ensure that when the Department uses unmanned aircraft, its use will continue to be guided by all applicable constitutional, statutory, and regulatory provisions—including privacy and civil rights and civil liberties protections.

The Department of Justice Inspector General recommended that the Department come up with a uniform system of rules and regulations to control how these devices are used. I understand there is a Department of Justice Working Group, which includes privacy, policy, legal, law enforcement, and grant-making components, to identify and address policy and legal issues pertaining to the use of UAS. The Department is also participating in an interagency process that is considering UAS-related policy issues that are shared across departments and agencies. If confirmed, I look forward to carefully examining the Department's efforts in this area.

41. The House Oversight and Government Reform Committee issued a report last year finding that a banking enforcement program involving DOJ is in fact aimed at depriving legal but politically-disfavored business sectors of access to the financial services businesses need to survive in the modern economy. The name of the program is Operation Choke Point. You were asked about Operation Choke Point at your hearing, but you seemed unfamiliar with the fact that the program's targets include legal sellers of firearms and ammunition, among other industries. Internal investigators at both DOJ and FDIC are conducting formal inquiries into the program and the officials and employees involved.

- a. Would you agree that DOJ should not use its authority to discourage legal enterprises from operating, even if some administration officials consider them "morally unacceptable"?

RESPONSE: I understand that the purpose of Operation Chokepoint is to target financial institutions that are involved in perpetrating frauds upon consumers—where, for example, a financial institution is facilitating the looting of consumer bank accounts.

The role of the Department of Justice is to enforce the law and as a career prosecutor and the United States Attorney for the Eastern District of New York, I can assure you that I, and my

fellow prosecutors and law enforcement partners, take this role seriously. Our job is to investigate specific evidence of unlawful conduct and enforce the law.

The Department works every day to uphold the law and protect the American people. To ensure that our efforts are effective, the Department also must make sure to prevent any potential misunderstanding of its efforts that could be detrimental to lawful businesses. Thus, if confirmed as Attorney General, I will make clear that it is imperative that we inform financial institutions that any investigations are based on specific evidence that a financial institution is breaking the law, and not on the institution's relationships with lawful industries or companies.

- b. Would you support appointment of a special counsel to hold accountable any DOJ official who is found to have abused his or her authority under this program to close down lawful businesses?

RESPONSE: If I am confirmed as Attorney General, I can commit to you that I will take seriously every allegation of abuse of power brought to my attention. And in conjunction with career prosecutors and Congress where appropriate, I will make the best decision about how to handle such an investigation. If a member of the Department of Justice is found to have crossed the line, that individual must be dealt with swiftly and according to law.

42. On Election Day last year—3 years after the House subpoena was issued and 2 years after the contempt vote—Attorney General Holder finally delivered 64,000 pages of documents to the House. Those documents were only provided to the House. The Justice Department failed to deliver them to this Committee, despite the agreement I made with Attorney General Holder to release my hold on Deputy Attorney General Cole's nomination. The Senate Judiciary Committee was supposed to receive all the same Fast and Furious documents delivered to the House throughout the investigation. The subpoena is still being litigated, so the court may order more documents to be provided in the future.

Will you commit that, if confirmed, you will ensure that this committee receives any future Fast and Furious documents provided in the litigation with the House?

RESPONSE: If I am confirmed as Attorney General, I will ensure that any future documents provided to the U.S. House of Representatives in this litigation are also provided to the Senate Judiciary Committee.

43. The Department has argued in the Fast and Furious litigation that executive privilege is more than just a Presidential privilege, but that it also establishes a constitutional shield for the "deliberative process" of lower level agency officials. However, the deliberative process privilege is traditionally a common law doctrine and one of the exemptions in the Freedom of Information Act—not a constitutional privilege of equal standing with the inherent Constitutional power of Congress to conduct oversight inquiries. Deliberative

process also traditionally applies only to content that is deliberative and pre-decisional.¹ It does not shield material created after a decision is made, or that is purely factual.

Moreover, the Attorney General has sought to use this exceedingly broad notion of privilege to justify withholding documents that he has stated *are not privileged*. On November 15, 2013, the Attorney General acknowledged in the Fast and Furious litigation that he was withholding documents responsive to the House subpoena that “do not . . . contain material that would be considered deliberative under common law or statutory standards.”² Furthermore, the OLC opinion on the President’s assertion of executive privilege suggests that the privilege applies “*regardless* of whether a given document contains deliberative material.”³

Yet, the Department *did* produce deliberative, pre-decisional material prior to the Feb. 4, 2011 gunwalking denial letter to me, despite its claim now that such material is privileged. The Department conceded that Congress had a clear interest in finding out whether officials knew before it was sent that the Feb. 4th letter was false. It provided pre-Feb. 4th material—even though it was pre-decisional and deliberative. However, the Department still refuses to concede that Congress has an interest in discovering how officials learned that the letter was false *after it was sent*. It refused to provide post-Feb. 4th material—even though it is post-decisional and factual in nature. The Department categorically withheld *all* records from after the Feb. 4th letter until Election Day 2014. Only then, after a court order, did it finally produce to the House Committee post-Feb. 4th documents that contained purely factual, post-decisional material.

- a. What is the scope of executive privilege, particularly over agency documents unrelated to the President?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to study the doctrine of Executive Privilege, but my understanding is that the doctrine is constitutionally-based. To preserve and protect the Executive Branch’s proper functioning under the Constitution, some materials need to remain confidential. In some instances, it becomes necessary for the President to assert Executive Privilege in order to preserve the separation of powers.

- b. Does the President have an executive privilege to withhold documents subpoenaed by Congress that have nothing to do with advice or communications involving the White House? If so, what is the legal basis for that claim?

RESPONSE: As noted above, as the United States Attorney for the Eastern District of New York, I have not had occasion to study the doctrine of Executive Privilege, but my understanding

¹ *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

² Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

³ 36 Op. O.L.C. 1, 3 (June 19, 2012) (emphasis added).

is that the doctrine is constitutionally-based. I also understand that the scope of the privilege is the subject of ongoing litigation, and that the Department of Justice has taken the position that Executive Privilege is necessary to protect the President's broad Article II functions, a position accepted by the district court.

- c. Congress created a statutory deliberative process exemption for documents subject to Freedom of Information Act requests. Do you believe a similar exception applies to congressional subpoenas, or are requests from Congress entitled to more weight?

RESPONSE: I commit that, if I am confirmed as Attorney General, I would work closely with Congress to accommodate its legislative interests. I would hope that these efforts would eliminate the need for a congressional subpoena.

- d. Are deliberative documents just as immune from Congressional scrutiny as they are from FOIA requestors?

RESPONSE: It is my understanding that the President's assertion of Executive Privilege is at issue in the ongoing Fast and Furious litigation. If I am confirmed as Attorney General, I will work to accommodate Congress's legislative and oversight interests.

- e. Can the President assert executive privilege over deliberative material, as the Office of Legal Counsel opinion suggested, "regardless of whether a given document contains deliberative content," and even where the material is post-decisional?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to study the doctrine of Executive Privilege, but my understanding is that the doctrine is constitutionally-based. It is my understanding, however, that Executive Privilege may be appropriately asserted over a wide variety of information, and that the exact scope of the privilege is the subject of ongoing litigation. If I am confirmed as Attorney General, I will work to accommodate Congress's legislative and oversight interests.

- f. The OLC opinion also claims that providing Congress with non-deliberative or purely factual agency documents would raise "significant separation of powers concerns." Do you agree, and if so, why?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to study the doctrine of Executive Privilege, but my understanding is that the doctrine is constitutionally-based. To preserve and protect the Executive Branch's proper functioning under the Constitution, some materials need to remain confidential. In some instances, it becomes necessary for the President to assert Executive Privilege in order to preserve the separation of powers.

- g. Given that non-deliberative, purely factual agency documents are clearly not considered part of any protected “deliberative process” under common law or statute, what is the legal justification for withholding such documents under Congressional subpoena?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to study the doctrine of Executive Privilege, but my understanding is that the doctrine is constitutionally-based. It is my understanding, however, that Executive Privilege may be appropriately asserted over a wide variety of information, and that the exact scope of the privilege is the subject of ongoing litigation.

44. In the Fast and Furious litigation, the Department has relied on an extremely broad notion of executive privilege in its refusal to produce non-deliberative, post-decisional documents that would help Congress understand when and how the Department came to know that its Feb. 4, 2011 letter to me denying gunwalking was false. Specifically, the Department categorically refused, until Election Day last year, to produce *64,000 documents*—even though the Attorney General recognized that at least some of those documents “[did] not . . . contain material that would be considered deliberative under common law or statutory standards.”⁴ The OLC opinion on the matter suggests that assertion of privilege is proper “regardless of whether a given document contains deliberative material.”⁵

The Department relied on this overbroad view of executive privilege when it declined to bring the congressional contempt citation of Attorney General Holder before a grand jury.⁶ The Department sent this denial letter to the Speaker of the House before the contempt citation even reached the U.S. Attorney.⁷ The U.S. Attorney failed to answer my questions seeking an explanation of the facts and circumstances sufficient for Congress to determine whether he made an independent judgment regarding the refusal to present the citation.⁸

The law states that it is the “*duty*” of the U.S. Attorney “to bring the matter before the grand jury for its action.”⁹

- a. What does it mean for the U.S. Attorney to have a “*duty*” to present a congressional contempt citation to a grand jury?

⁴ Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

⁵ 36 Op. O.L.C. 1, 3 (Jun 19, 2012).

⁶ Letter from Senator Charles E. Grassley to U.S. Attorney Ronald Machen (June 29, 2012), at 2.

⁷ *Id.* at 1.

⁸ *Id.* at 1-2.

⁹ 2 U.S.C. § 194 (emphasis added).

- b. If the U.S. Attorney has any discretion in cases where there is a claim of Executive Privilege, does he also have an obligation to make an independent evaluation of such a claim? If not, please explain why not.
- c. Under the Department's interpretation of the statute, what is left of the Congressional contempt power against any agency able to convince the President to assert executive privilege?
- d. Under the Department's interpretation of the statute, what safeguards against a President's improper claims of executive privilege if not the independent legal judgment of the U.S. Attorney charged by statute with presenting the contempt citation to a grand jury?
- e. The Department relies on its own OLC opinions, which claim, among other things, that the Department should not prosecute officials for contempt at least in part because Congress can resort to civil litigation to enforce its subpoenas. However, it is clear from the delays in the Fast and Furious litigation that this enforcement tool is insufficient to ensure that Congress has adequate access to information to carry out its oversight responsibilities. The House Committee has had to re-issue the subpoena twice to avoid the case being mooted at the beginning of each new Congress. This gives the impression that the Department is delaying the process in hopes that political events may allow it to avoid a judicial resolution. What steps would you take to counter that appearance and resolve the dispute in a more timely way?

RESPONSE: I have not had occasion as the United States Attorney for the Eastern District of New York to acquaint myself with this dispute. My understanding is that a 1984 opinion signed by Theodore Olson, the head of the Office of Legal Counsel under President Reagan, sets forth the longstanding Department of Justice position with respect to 2 U.S.C. § 194. That said, I believe it is important for the Executive Branch to work with Congress to accommodate its legitimate oversight interests, and if confirmed as Attorney General, I will work to invigorate this tradition of collaboration.

- 45. If confirmed, will you pledge to personally re-evaluate the Department's litigation strategy in the fast and furious matter, the merits of its positions, and refusal to settle the case up to this point—and provide your conclusions to this Committee?

RESPONSE: As United States Attorney, I am not personally familiar with the Department's litigation strategy in the Fast and Furious matter or the particulars of the ongoing litigation. If I am confirmed as Attorney General, I look forward to learning the status of this litigation.

- 46. Josephine Terry sent a letter to you dated January 26, 2015, informing you that Department of Justice officials had lied to her regarding the source of the weapons found at her son's murder scene and withheld key information from the lead FBI investigator on the case. In spite of the findings and recommendations by the DOJ OIG and the ATF

Professional Review Board, many of the officials involved remain employed by the Department or ATF. Ms. Terry asks that you review the conduct and performance of those officials and examine whether the ATF obstructed the FBI's investigation of her son's murder.

As Ms. Terry asks:

- a. Will you "review the conduct and performance of the Justice Department and ATF . . . to determine whether the discipline or other administrative action with regard to each employee was appropriate"?
- b. "[I]f ATF's Professional Review Board did in fact recommend certain discipline such as termination for certain employees, [will you] determine why this has not occurred"?
- c. Ms. Terry also asks about evidence that officials may have initially concealed from the FBI agent investigating her son's murder the fact that the weapons found at the scene traced back to Fast and Furious. Do you agree with Ms. Terry that, if this is true, these officials may have hindered and obstructed a federal criminal investigation? If so, and if confirmed, will you look into it? If not, please explain why not.

RESPONSE: If I am confirmed as Attorney General, I look forward to educating myself on these important questions and will take appropriate actions.

47. In November 2014, the Department delivered to the House 64,000 pages of documents related to Fast and Furious that it had withheld for three years, even though the Attorney General admitted that they were not all privileged. One of the documents is an email that shows that the Justice Department and the White House press offices attempted to stop CBS News from reporting on Fast and Furious.

In an email dated October 4, 2011, the Attorney General's top press aide, Tracy Schmalzer, claimed that CBS News reporter Sharyl Attkisson was "out of control."¹⁰ The Attorney General's press aide also told White House Deputy Press Secretary Eric Schultz that she planned on calling CBS News anchor Bob Schieffer to pressure the network to block Ms. Attkisson's Fast and Furious reporting. The White House Deputy Press Secretary replied, "Good. Her piece was really bad for the AG."

The White House Deputy Press Secretary also told Attorney General Holder's press aide that he was working with reporter Susan Davis to target Rep. Darrell Issa. In the same email chain, the White House Deputy Press Secretary tells Attorney General Holder's press aide that he would provide Susan Davis with "leaks." Ms. Davis wrote a critical piece on Representative Issa a few weeks later.

¹⁰ E. Schulz and T. Schmalzer e-mail chain (Oct. 4, 2011), available at <http://www.judicialwatch.org/document-archive/control/>; see also K. Pavlich, Document Dump Shows DOJ Worked With White House To Target 'Out of Control' Sharyl Attkisson For Fast and Furious Coverage, Townhall.com (Nov. 21, 2014).

Ms. Attkisson also testified before the Committee that the Department physically barred her from attending a Fast and Furious briefing in a public building, while handpicking other reporters who were allowed to get past building security for the briefing.

- a. Do you believe the job of the taxpayer-funded press office at the Department of Justice should include pressuring networks not to run news stories that the Attorney General does not like?

RESPONSE: If confirmed as Attorney General, I will work to ensure the Department conducts its work as transparently as possible. The Department's Office of Public Affairs (OPA) plays a critical role in fulfilling this goal by communicating information about the Department's overall mission and daily activities to the public. In doing this, I believe OPA should strive to provide journalists covering the Department with the most information possible on any given issue so that the Department's work can be reported accurately and fairly. Moreover, I believe that OPA must interact with all journalists courteously and professionally at all times, even if there is disagreement about the accuracy of a story that has been published.

- b. Is it appropriate for that press office to coordinate with the White House on "leaks" of negative information about a Committee Chairman conducting aggressive oversight of the Justice Department?

RESPONSE: I am not familiar with the incident you mention. In general, I would expect the work of OPA to be focused on communicating information related to the Department's core law enforcement responsibilities and legal casework, as opposed to anything else.

- c. If confirmed, what would you do to curb this kind of activity in your press office?

RESPONSE: As noted above, if I am confirmed as Attorney General, my approach will be to ensure that OPA is focused on advancing the Department's overall mission by communicating the facts of its law enforcement work to the American people. In its dealings with journalists, I would expect OPA to provide as much information as possible to ensure timely and accurate reporting, and to maintain a professional and courteous approach at all times. To the extent that I observe that OPA is in any way deviating from these standards, I would not hesitate to address the situation swiftly.

48. If confirmed, what steps would you take to ensure that reporters are not barred from briefings simply because they report on stories unfavorable to the Attorney General?

RESPONSE: During my time as the United States Attorney for the Eastern District of New York, we routinely invited all interested media to our press conferences, and sought to respond to all media inquiries, regardless of the particular outlet that was posing the question. If I am confirmed as Attorney General, I will strive to ensure that OPA adheres to this same approach.

49. On December 30, 2014, former CBS News reporter Sharyl Attkisson — who reported on Operation Fast and Furious and Benghazi — filed a complaint in court alleging that the government had conducted “unauthorized and illegal surveillance” of her computers and telephones.¹¹ It is unclear so far whether the surveillance was conducted by the government, but it does seem clear that there was a hack of her CBS computers. CBS News issued a press release confirming that there was a hack.¹²

Ms. Attkisson’s complaint alleges that her forensics experts found that propriety federal government software had been used to accomplish an intrusion on her work computer, though that is unconfirmed.¹³ In addition, both her work and personal computers allegedly showed evidence of attacks that were coordinated and highly-skilled.¹⁴ Ms. Attkisson filed a complaint with DOJ-OIG and the FBI regarding this matter, but the FBI never even interviewed her about her claim.¹⁵ In a letter to Sen. Coburn, DOJ sought to blame Ms. Attkisson for failing to “follow up” with the FBI regarding her complaint.¹⁶ Ms. Attkisson also has filed a FOIA request with the FBI, and received only a few pages in response so far. The documents indicate knowledge of the hack, but it is unclear what, if any, investigative steps the FBI took to pursue a case.

- a. Given the growing importance of cybersecurity as a priority for the Department and the chilling effects that politically motivated hacking could have on the First Amendment activities of news organizations, do you believe the FBI should find out who hacked into CBS News, regardless of who is responsible?

RESPONSE: I share your concerns about cybersecurity and the need to be vigilant against hacking, politically motivated or otherwise. It is my understanding that the Department’s Office of Inspector General conducted an investigation into Ms. Attkisson’s allegations and concluded that it could not substantiate the allegations that her computers were subject to remote intrusion by the FBI, any other government personnel, or otherwise.

- b. In light of the allegation that a government agency or a contractor for a government agency may be responsible, if confirmed, what steps would you take to ensure that there is a thorough and independent investigation of the CBS hack?

RESPONSE: If confirmed, I will ensure that the Department carefully considers credible allegations of wrongdoing that are brought to our attention. With respect to the particular matter you have described, it is my understanding that the Department’s Office of Inspector General has conducted an independent investigation of this matter.

¹¹ Complaint at ¶ 1, *Attkisson v. Holder*, 2014-CA-8321 (D.C. Super. Ct. Dec. 30, 2014).

¹² See E. Wemple, CBS News confirms multiple breaches of Sharyl Attkisson’s computer, Washington Post Blog (June 14 2013).

¹³ Compl. ¶ 44.

¹⁴ *Id.* ¶ 45.

¹⁵ *Id.* ¶¶ 47, 54; L. Grove, Ex-CBS Reporter Sharyl Attkisson’s Battle Royale With the Feds, The Daily Beast (Jan. 9, 2015).

¹⁶ Letter from P. Kadzik to T. Coburn (Dec. 12, 2013), at 2.

- c. If confirmed, how would you deal with the inherent conflict in the Department's interest in both defending itself against litigation alleging some government liability and its interest in ensuring that there is a thorough and independent inquiry to find out who was responsible for the CBS hack?

RESPONSE: I understand that in this case, the Department of Justice Inspector General performed an investigation of Ms. Attkisson's allegations, and I have confidence in the Inspector General's ability to conduct thorough and independent inquiries.

- d. The Department also has allegedly failed to respond to related FOIA requests in a timely and appropriate way. If confirmed, will you pledge to re-evaluate the Department's FOIA responses on this matter to date and seek to avoid costly FOIA litigation by being as transparent as possible? If not, please explain why not.

RESPONSE: The Freedom of Information Act (FOIA) is a vital part of our democracy, and if confirmed, I commit to working with the FBI, as well as the rest of the Department and Executive Branch, to ensure an appropriate response to this and other FOIA requests.

- e. If confirmed, will you cooperate fully with this committee's inquiry into the Department's response to the CBS hack— including providing internal documents about efforts to find out who was responsible? If not, please explain why not.

RESPONSE: If confirmed, I commit to working with this Committee as it exercises its duty to conduct oversight of the Department. I believe that we will be able to work together to ensure the Committee has the documents and information it needs to conduct oversight while also protecting the Department's law enforcement and confidentiality interests.

50. The FBI is exempt from the normal protections that apply to other law enforcement agencies under the Whistleblower Protection Act.¹⁷ Operating outside of the traditional whistleblower protection framework, the Department's record of actually guarding whistleblowers from retaliation is historically weak.

For example, regulations designate specific individuals to whom FBI employees may make protected disclosures.¹⁸ Those individuals include

the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR), the FBI Inspection Division (FBI-INSD) Internal Investigations Section (collectively, Receiving Offices), the Attorney General, the Deputy

¹⁷ 28 C.F.R. Part 27.

¹⁸ 28 C.F.R. § 27.1(a).

Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office¹⁹

The regulations do *not* protect whistleblowers from retaliation when they make initial disclosures of wrongdoing to their direct or immediate supervisors.

In 2012, the President tasked the Attorney General to report on the effectiveness of the FBI whistleblower regulations.²⁰ The Department submitted its report a year late.²¹

In that report, the Department noted that of 89 reviewed cases of whistleblower complaints, 69 were found to be “non-cognizable.” Further, a “significant portion” of those deemed “non-cognizable” involved disclosures that were “not made to the proper individual or office under 28 C.F.R. § 27.1(a).”²²

The Department recommended expanding the number of designated officials to whom whistleblowers may make a protected disclosure, but only to include the second-in-command of a field office, such as the Assistant Special Agent in Charge of a smaller field office or the Special Agent in Charge of a larger field office.²³ The Department declined to expand the category of designated officials to include an employee’s direct or immediate supervisor, even though, as the Department noted, “OSC believes that to deny protection unless the disclosure is made to the high-ranked supervisors in the office would undermine a central purpose of whistleblower protection laws.”²⁴

Notably, PPD-19 specifically defined a “protected disclosure” within the intelligence community, of which the FBI forms a part, as “a disclosure of information by the employee to a supervisor in the employee’s direct chain of command *up to and including* the head of the employing agency”²⁵ The FBI thus remains the *only agency* in the Executive Branch that does not protect disclosures made by employees to their direct or immediate supervisor.

Unfortunately, this inadequate regulatory framework is not the sole culprit for the weak protections afforded to FBI whistleblowers. I have personally spoken to current and former FBI employees whose cases languished anywhere between *nine and eleven years* before those employees won relief for retaliatory acts and practices committed against them for reporting waste, fraud, and abuse in the FBI.

- a. Why shouldn’t whistleblowers in the FBI who report waste, fraud, and abuse to their direct supervisors be protected?

¹⁹ *Id.*

²⁰ The White House, Presidential Policy Directive/PPD-19 (Oct. 10, 2012), at 5 [“PPD-19”].

²¹ Department of Justice Report on Regulations Protecting FBI Whistleblowers (Apr. 2014) [“DOJ FBI Whistleblower Report”].

²² DOJ FBI Whistleblower Report at 7.

²³ *Id.* at 13.

²⁴ *Id.* at 14.

²⁵ PPD-19 at 7 (emphasis added).

RESPONSE: I believe that whistleblowers play a vital role in protecting against waste, fraud, and abuse of taxpayer funds. As you have described above, I understand that the Department recently released a lengthy report analyzing the system in place to protect FBI whistleblowers, and made a number of recommendations to improve that process. If I am confirmed as Attorney General, I will be committed to reviewing those recommendations and working to ensure that the system to protect FBI whistleblowers is fair, effective, and properly protects whistleblowers against prohibited retaliation.

- b. Do you believe that there is anything unique about the FBI that suggests its policy on this issue should be different from the rest of the law enforcement and intelligence communities? If so, please explain why.

RESPONSE: While I am aware that the Department recently released a report on how best to protect FBI whistleblowers, I am not familiar with its details or recommendations. If I am confirmed as Attorney General, I am committed to reviewing this issue.

- c. If confirmed, will you commit to personally reviewing any changes the Department makes to its policies and procedures in handling FBI whistleblower complaints?

RESPONSE: Yes.

- d. If confirmed, will you provide this committee with regular updates on the Department's progress in improving the effectiveness and timeliness of its policies and procedures for addressing these claims?

RESPONSE: If I am confirmed as Attorney General, I hope to have an ongoing dialogue with the Committee not just about the issue of FBI whistleblower policies but also about the other important issues raised in my hearing and in these questions.

51. On September 5, 2014, I wrote to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Office of Justice Programs (OJP) regarding allegations that OJJDP knowingly granted millions of taxpayer dollars to states that incarcerated runaway youth, foster youth, and other vulnerable minors in violation of the Juvenile Justice and Delinquency Prevention Act (JJDP). OJJDP's responses to my inquiry confirmed whistleblowers' accounts of compliance monitoring failures at OJJDP.²⁶ The Inspector General has also detailed some of these failures in a January 2014 report.²⁷

²⁶ Letter from Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary, to Hon. Karol Mason, Assistant Attorney General, U.S. Department of Justice (January 14, 2015), <http://www.grassley.senate.gov/sites/default/files/news/upload/CEG%20to%20OJP%20%28JJDP%20Act%20Grant%20Fraud%29%2C%201-14-15.pdf>.

²⁷ *Id.*

The core problem appears to be OJJDP's failure to understand or implement its separate and distinct compliance monitoring obligations under the law:

- OJJDP is required to reduce a state's funding for a given year by 20 percent for each core requirement violated in the previous fiscal year.²⁸
- OJJDP is *also* required to ensure that such a state does not receive *any* JJJPA funds for the year, unless that state meets one of two criteria, including a showing of subsequent, substantial compliance with the requirement(s) it was violating.²⁹

Yet, OJJDP has admitted and defended a policy that appears to conflate these two obligations, by allowing non-compliant states to avoid the 20 percent reductions so long as they are able to demonstrate subsequent, substantial compliance with the non-compliant requirement(s).³⁰

Moreover, OJJDP admitted that "this [policy] does not appear to have been reduced to writing" even though "it has been the common practice since at least 1986."³¹ In addition, OJJDP explained that "[it] has not historically maintained a comprehensive record of all communications with the 55 participating states and territories."³²

This gives rise to a concern that this policy, questionable on its face, may be arbitrary as applied. Moreover, there is a growing concern as to just how many taxpayer dollars OJJDP has awarded to states that imprisoned vulnerable youth in violation of the JJJPA since then.

- a. Do you agree that it is an inappropriate use of taxpayer dollars to reward states that lock up foster youth and runaways in violation of the Juvenile Justice Delinquency Prevention Act?

RESPONSE: I believe that all federal employees share an obligation to protect taxpayer dollars from misuse. This is especially true for the grant-making components of the Department of Justice. If I am confirmed as Attorney General, I will work with the Office of Justice Programs to ensure that funds dispensed by the Office of Juvenile Justice and Delinquency Prevention are distributed consistent with the restrictions of the Juvenile Justice and Delinquency Prevention Act.

²⁸ 42 U.S.C. § 5633 (c)(1).

²⁹ 42 U.S.C. § 5633 (c)(2). Significantly, subsections (c)(1) and (c)(2) are conjoined by the operative "and."

³⁰ Letter from Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, Office of Legislative Affairs, to Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary (October 28, 2014).

³¹ Email from U.S. Department of Justice, Office of Legislative Affairs, to Staff of Sen. Charles E. Grassley, Ranking Member, and Sen. Patrick J. Leahy, Chairman, S. Comm. on the Judiciary (November 21, 2014).

³² *Id.*

- b. If confirmed as Attorney General, will you personally look into this issue and cooperate fully with our inquiry—including ensuring that the replies to our letters are timely?

RESPONSE: If I am confirmed as Attorney General, I will work with the Office of Justice Programs to ensure that funds dispensed by the Office of Juvenile Justice and Delinquency Prevention are distributed consistent with the restrictions of the Juvenile Justice and Delinquency Prevention Act, and that the Committee receives information to perform its oversight function.

52. In 2013, the Government Accountability Office (GAO) reported that Attorney General Holder took 366 flights for non-mission purposes aboard Department aircraft at a cost of \$5.8 million.³³ This report also states that in 2009 the FBI stopped reporting to the General Services Administration (GSA) flights taken by senior federal officials aboard its aircraft, although reporting is required by Office of Management and Budget (OMB) Circular A-126.³⁴ Circular A-126 states that agencies must report semiannually to GSA each use of such aircraft for non-mission travel by senior executives.³⁵

- a. As it stands now, the Department does not report the Attorney General's travel as other agencies do under OMB Circular A-126. If you were confirmed as Attorney General, would you commit to publicly reporting the amount of your travel on FBI jets? If not, why not?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to study this issue and am not familiar with the specific reporting requirements for official travel on government aircraft.

- b. If confirmed, would you limit your travel in order to save taxpayer money and ensure that the FBI aircraft are always available for counter-terrorism operational flights? If not, why not?

RESPONSE: It is my understanding that all Department of Justice aircraft, including the FBI's fleet, are always used for mission purposes first. If I am confirmed as Attorney General, I am committed to utilizing the Department's aircraft resources in a way that supports the Department's mission and is a cost-effective, appropriate use of taxpayer dollars.

- c. If confirmed, would you be willing to develop internal guidance or policies that would help guide and regulate the extent to which "required use" travelers do not inappropriately or overly use government aircraft for personal reasons? If not, please explain why.

³³ GAO, *Executives' Use of Aircraft for Nonmission Purposes*, GAO-13-235 (Washington, D.C.: February 2013).

³⁴ *Id.*

³⁵ *Id.*

RESPONSE: As the United States Attorney for the Eastern District of New York, I am not familiar with Department policies and guidance regarding “required use” travelers’ use of government aircraft. As noted above, if confirmed as Attorney General, I am committed to utilizing the Department’s aircraft resources in a cost-effective and mission-supportive manner.

53. Although administrative leave is not authorized by statute, precedent allows it as an exercise of agency discretion, but only for occasional, short periods of time and only when it is in the best interests of the taxpayer.³⁶ In a 2002 Department of Justice (DOJ) memorandum on administrative leave, DOJ acknowledged that “components too frequently are placing employees on administrative leave rather than utilizing other more appropriate options.”³⁷ As a result, DOJ changed its policy to limit the use of administrative leave to 10 work days unless approved by the assistant attorney general for administration or his designee for a longer period.³⁸

³⁶ To the Chairman, U.S. Civil Service Commission, 38 Comp. Gen. 203 (1958) (where removal of an employee is necessitated by safety concerns, only 24 hours administrative leave is appropriately authorized, and extensive paid leave pending an investigation does not qualify as a proper use of “administrative leave,” but rather “immediate” steps should be taken to reduce time during which an employee is on paid leave); Navy Department-Reduction In Force-Administrative Leave During 30-Day Notice Period, 66 Comp. Gen. 639, 640 (1987) (holding that decisions of the Comptroller General and the guidelines of the Office of Personnel Management limit an agency’s discretion to grant administrative leave to situations involving brief absences); Ricardo S. Morado – Excused Absence, 1980 WL 17293, 1 (1980) (when it became clear that an employee would not be returning to work, an agency was not authorized to grant administrative leave pending the separation); Miller v. Department of Defense, 45 M.S.P.R. 263, 266 (MSPB, 1990) (a settlement agreement was declared invalid as the Merit Systems Protection Board determined that the Department of Defense did not have the authority to grant an employee nine months of paid administrative leave, where said employee was to be removed at the end of the period of administrative leave, because there was no statutory provision that authorized the agency to grant paid administrative leave for such an “extended period of time”); *pet. for rehearing denied by Miller v. Dept of Defense*, 1992 U.S. App. LEXIS 2457 (Fed. Cir. Feb. 18, 1992); In the Matter of the Grant of Administrative Leave Under Arbitration Leave, 53 Comp. Gen. 1054, 1056-57 (the Comptroller General refused to grant an employee thirty days of administrative leave, where that employee was injured on the job and unable to work in his full capacity, as the grant of administrative leave constituted an “extended period of excused absence” that was not permitted under any statute); Nina R. Mathews-Age Discrimination/Title VII Resolution Agreement-Compensatory Damages, 1990 WL 278216, 1-2 (where an employee was granted twenty-two weeks of administrative leave pay in settlement of a personnel claim, the agreement was deemed invalid by the GAO, as the Comptroller determined that there was no relevant legal basis by which the employee could be placed on extended administrative leave with pay); Excused Absence for Bar Examination Preparation, 1975 WL 8763, 1 (1975) (periods of 14, 28 and 31 days did not constitute “periods of brief duration” under which an agency had authority to grant administrative leave for employees to take their Bar examinations); Department of Housing and Urban Development Employee-Administrative Leave, 67 Comp. Gen. 126, 128 (1987) (The Comptroller General held that the agency’s “decision to allow the employee to participate in a NIH therapeutic trial for 3 days a month in a cancer research effort being run by the National Cancer Institute is consistent with the broad framework of decisions of this Office and the FPM Supplement addressing the discretionary agency review of administrative leave requests”); Frederick W. Merkle, Jr. – Administrative Leave, 1980 WL 14633, 1 (1980) (an eight-week period could not constitute administrative leave for an employee awaiting a decision on his eligibility for early retirement, as it constituted an “extended period of time”); Gladys W. Sutton-Administrative Leave in Lieu of Leave Without Pay, 1983 WL 27142, 1 (a five-week period constituted an “extended period” where administrative leave could not be properly granted by an agency so that an employee could preserve her eligibility for a discontinued service retirement program).

³⁷ Diegelman, R. *Proper Use of Administrative Leave* [Memorandum]. (Washington, DC: September 27, 2002) Department of Justice

³⁸ *Id.*

However, an October 2014 Government Accountability Office (GAO) report found that from fiscal years 2011 to 2013, DOJ placed 1,849 employees on paid administrative leave for one month to one year.³⁹ The average number of days on administrative leave for these 1,849 employees was 38 days, which is significantly higher than the 10 work day limit stated in DOJ policy.⁴⁰ Moreover, 23 employees were on paid administrative leave for six months or more.⁴¹ It appears that DOJ is approving much more administrative leave than its policy suggests is appropriate.

In November 2014, I wrote Attorney General Holder about this issue. Given significant costs to the taxpayer for salaries and benefits and the fact that DOJ has an administrative leave policy that purports to limit its use to 10 days or less absent unusual circumstances—it is unclear why so many DOJ employees are taking so much administrative leave.

- a. If confirmed, how would you ensure that the Department actually limits its use of administrative leave?

RESPONSE: In my tenures as the United States Attorney for the Eastern District of New York, I have managed a large number of Department employees and found that administrative leave is appropriate in some circumstances. In addition, Department policies and procedures govern the use of and approval process for administrative leave to ensure proper and limited use. I do not, however, have a nationwide perspective on this issue. If I am confirmed as Attorney General, I will commit to ensuring that the leave policy is being administered appropriately.

- b. How would you strengthen the Department's 10-day administrative leave policy to ensure that DOJ employees are not sitting at home for a six months or more collecting a check for not working?

RESPONSE: If I am confirmed as Attorney General, I will commit to ensuring that the leave policy is being administered appropriately.

- c. If confirmed, will you to respond to my letter promptly and thoroughly so that this Committee can examine the detailed facts and circumstances that led to each of these employees being on leave for such extended periods of time?

RESPONSE: If I am confirmed as Attorney General, I will review your letter and ensure that you receive a response that is thorough and timely.

54. On November 19, 2013, and again on September 9, 2014, Inspector General Michael Horowitz testified that the Department is improperly impeding his access to grand jury

³⁹ GAO, *Use of Paid Administrative Leave*, GAO-15-79 (Washington, D.C.: October 2014).

⁴⁰ *Id.*

⁴¹ *Id.*

records, Title III electronic surveillance documents, and Fair Credit Reporting Act consumer credit information.⁴²

Recognizing that Inspectors General cannot fulfill their statutorily-mandated duty to conduct oversight without access to Department records, Section 6(a)(1) of the Inspector General Act authorizes Inspectors General to access:

*all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishment which relates to programs and operations with respect to which that Inspector General has responsibilities under this Act.*⁴³

In certain limited circumstances, the law does allow the Attorney General to “prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena.”⁴⁴ However, the Attorney General is required to provide written notice to the Inspector General of the reasons for doing so and to forward a copy of that written notice to Congress.⁴⁵

Yet, the statutory procedure for written notice by the Attorney General and a report to Congress were not followed when the Department withheld grand jury records, wiretap documents, and consumer credit information from the Inspector General.⁴⁶ Eventually, the Inspector General obtained these records after the Attorney General and the Deputy Attorney General granted written permission.⁴⁷

Under the Act, however, the Attorney General is required to write to the Inspector General not when *permitting* access to records, but when *preventing an OIG review, altogether*.⁴⁸ In other words, the burden is placed on the Attorney General to explain in writing why the Inspector General’s work should be impeded, not *vice versa*. Under the statute, the Attorney General’s blessing on the IG’s work is not required. That is the essence of independence.

⁴² U.S. Senate Committee on Homeland Security and Government Affairs, Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, *Strengthening Government Oversight: Examining the Roles and Effectiveness of Oversight Positions Within the Federal Workforce*, (November 19, 2013) [hereinafter Senate Homeland Security Hearing]; <http://www.hsgac.senate.gov/subcommittees/fpfw/hearings/strengthening-government-oversight-examining-the-roles-and-effectiveness-of-oversight-positions-within-the-federal-workforce>; accessed March 5, 2014; see also U.S. House of Representatives Committee on the Judiciary: *Access to Justice?: Does DOJ’s Office of Inspector General Have Access to Information Needed to Conduct Proper Oversight?* (September 9, 2014); <http://judiciary.house.gov/index.cfm/2014/9/hearing-access-to-justice-does-doj-s-office-of-inspector-general-have-access-to-information-needed-to-conduct-proper-oversight>; accessed September 23, 2014.

⁴³ 5 U.S.C. App. § 6(a)(1).

⁴⁴ 5 U.S.C. App. § 8E(a)(1), (2).

⁴⁵ 5 U.S.C. App. § 8E(a)(3).

⁴⁶ See Senate Homeland Security Hearing.

⁴⁷ *Id.*

⁴⁸ 5 U.S.C. App. § 8E(a)(3).

Last May, the Department's leadership asked the Office of Legal Counsel to issue an opinion on this topic. In October, I asked that this opinion specifically address the legality of the Attorney General's current practice. House Judiciary Committee Ranking Member, John Conyers, joined me in this request. We are still waiting for the OLC Opinion.

On February 3, 2015, the Inspector General issued a report pursuant to Section 218 of the Department of Justice Appropriations Act, 2015,⁴⁹ stating that the Federal Bureau of Investigation (FBI) has failed – for reasons unrelated to any express limitation in Section 6(a) of the Inspector General Act (IG Act) to provide the Office of the Inspector General with timely access to certain records.⁵⁰

Section 218 provides that no appropriated funds shall be used to deny the Inspector General timely access to all Department records, or to impede his access to such records, unless in accordance with an express limitation of Section 6(a) of the IG Act.⁵¹ Section 218 also requires the Inspector General to report to Congress within five calendar days of any failures to comply with this requirement.⁵²

According to the February 3, 2015 report, the unfulfilled document requests were made on September 26, 2014 and October 29, 2014 as part of two investigations being conducted by the OIG under the Department's Whistleblower Protection Regulations for FBI employees, 28 C.F.R. pt. 27.⁵³

The main reason for the FBI's unwillingness to produce the requested records by the deadline requested by the Inspector General is the FBI's desire to continue its review of e-mails requested by the OIG to determine whether they contain any information which the FBI maintains the OIG is not legally entitled to access, such as grand jury, wiretap, and consumer credit information.⁵⁴ Further, the FBI further informed the OIG that the FBI would need the approval of the Attorney General or Deputy Attorney General in order to produce the requested records.⁵⁵

However, as noted above, the Attorney General's blessing on the IG's work is not required.

- a. If confirmed as Attorney General, will you commit to providing the OLC opinion to the Committee by a date certain?⁵⁶

⁴⁹ Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (2014).

⁵⁰ Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Thad Cochran and Sen. Barbara Mikulski, Sen. Comm. on Appropriations, and Rep. Harold Rogers and Rep. Nita Lowey, House Comm. on Appropriations (February 3, 2015) [hereinafter February 3 Report].

⁵¹ Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (2014).

⁵² *Id.*

⁵³ February 3 Report.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ In January 2012, OLC issued an opinion one month after it was requested, defending the power of the President to make recess appointments even when the Senate convenes for pro forma sessions. Of course,

RESPONSE: I believe strongly in the independence of the Inspector General, and share his goal of ensuring a well-functioning Department of Justice. I understand that the Office of Legal Counsel is currently working on an opinion that would address the interpretation of the Inspector General Act. Regardless of the outcome of this review, if confirmed, I will commit to providing the Inspector General with the documents necessary for him to complete his reviews.

- b. Given the clear language of the Inspector General Act, will you give me your commitment that, if confirmed, you will not stonewall the Inspector General or delay his work?

RESPONSE: If confirmed, I will commit to providing the Inspector General with the documents necessary for him to complete his reviews.

- c. And if you do find it necessary to delay an inquiry for legitimate reasons, will you commit to immediately provide the written notice required by Section 8E(a)(3) of the Inspector General Act?

RESPONSE: If confirmed, I will commit to providing notifications to Congress consistent with Section 8E(a)(3) of the Inspector General Act.

- d. If you believe a clarification to the law is necessary to ensure unlimited access to records for the Inspector General, would you support adding “notwithstanding any other provision of law” to the access statute as a solution adequate to prevent further access denials and delays? If not, please explain why not?

RESPONSE: As noted above, I believe strongly in the independence of the Inspector General, and share his goal of ensuring a well-functioning Department of Justice. I understand that the Office of Legal Counsel is currently working on an opinion that would address the differences of opinion between the FBI and the Inspector General regarding the interpretation of the Inspector General Act. Regardless of the outcome of this review, if I am confirmed as Attorney General, I will commit to providing the Inspector General with documents necessary for him to complete his reviews. If necessary, I will also work with Congress on any appropriate legislation.

- e. Given the FBI’s ongoing impediment of the Inspector General’s independence and timely access to records, as detailed in the February 3, 2015 report, will you commit to resolving this dispute as soon as possible according to the explicit provisions of the Inspector General Act, should you be confirmed?

the Supreme Court unanimously struck down OLC’s erroneous interpretation. But this shows that OLC can issue opinions rather quickly when it wants to.

RESPONSE: I am confident that the Inspector General and I will form a good working relationship, as we share the goal of a well-functioning Department of Justice. I understand that the Office of Legal Counsel is currently working on an opinion that would address the differences of opinion between the FBI and the Inspector General regarding the interpretation of the Inspector General Act. Regardless of the outcome of this review, if I am confirmed as Attorney General, I will commit to providing the Inspector General with documents necessary for him to complete his reviews.

55. Department of Justice attorneys have a great deal of power and discretion but I am concerned that without proper oversight, this power and authority can be abused without consequences. For example, the Department of Justice's Inspector General (IG) does not have the ability to investigate attorney misconduct. Rather, attorney misconduct is currently investigated by the Office of Professional Responsibility but this office does not have the same strong statutory independence as the IG. Currently, there are at least three examples of attorneys who remain employed by the Department despite evidence that these attorneys committed serious misconduct.
- a. A Federal judge found that Karla Dobinski, a trial attorney in the Civil Rights Division, engaged in a "wanton reckless course of action" when she posted comments to Nola.com news stories under a pseudonym about a trial where she provided evidence as a disinterested expert witness.⁵⁷ If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?

RESPONSE: Consistent with the positions taken by previous Attorneys General, across Administrations, I support the role of the Office of Professional Responsibility (OPR) in investigating attorney misconduct. OPR has been recognized consistently as a strong, independent entity within the Department that has a long and distinguished history of investigating allegations of attorney misconduct and recommending appropriate punishment. I understand that OPR is unique in that it has a singular focus on investigating attorney misconduct. If confirmed, I will commit to ensuring that the Department holds accountable any employees who are found to have committed misconduct.

- b. Stephanie Celandine Gyamfi, an attorney with the Department's Voting Rights section, was found to have engaged in perjury during a 2013 DOJ IG investigation. In addition, Ms. Gyamfi posted comments regarding an ongoing matter at the Voting Rights section suggesting that the State of Mississippi should change its motto to "disgusting and shameful."⁵⁸ If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?

⁵⁷ http://www.nola.com/crime/index.ssf/2013/09/doj_prosecutor_karla_dobinski.html

⁵⁸ http://www.wtok.com/home/headlines/Comment_Flap_Continues_150703975.html

RESPONSE: As the United States Attorney for the Eastern District of New York, I am not familiar with the details of this matter, so I am not in a position to know what personnel actions have taken place to date or whether they were appropriate. If I am confirmed as Attorney General, I will commit to ensuring that the Department holds accountable any employees who are found to have committed misconduct.

- c. A Federal judge wrote that DOJ attorneys attempted to perpetrate a “fraud upon the court” in a case involving Bureau of Alcohol, Tobacco, and Firearms Agent Jay Dobyns. U.S. District Court Judge Francis Allegra also took the unusual step of submitting these findings to Attorney General Holder.⁵⁹ If confirmed will you personally review Judge Allegra’s submission to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?

RESPONSE: As noted above, as the United States Attorney for the Eastern District of New York, I am not familiar with the details of this matter, so I am not in a position to know what personnel actions have taken place to date or whether they were appropriate. If I am confirmed as Attorney General, I will commit to ensuring that the Department holds accountable any employees who are found to have committed misconduct.

- d. On January 22, 2015, the District Court of the Southern District of Georgia received a letter from the U.S. Attorney’s Office informing it that Assistant U.S. Attorney Cameron Ippolito and ATF Special Agent Lou Valoze engaged in an improper relationship and provided potentially false or misleading information to a government agency in order to secure a visa for an informant. This has compromised cases in which Ms. Ippolito and Mr. Valoze collaborated and has already required Giglio disclosures in four separate cases. Ms. Ippolito and Mr. Valoze’s actions have harmed the Federal government and the Department of Justice. If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?

RESPONSE: As noted above, As the United States Attorney for the Eastern District of New York, I am not familiar with the details of this matter, so I am not in a position to know what personnel actions have taken place to date or whether they were appropriate. If I am confirmed as Attorney General, I will commit to ensuring that the Department holds accountable any employees who are found to have committed misconduct.

- c. What steps would you take to create a more independent and credible system of attorney discipline at the Department?

RESPONSE: OPR has been recognized consistently as a strong, independent entity within the Department that has a long and distinguished history of investigating allegations of attorney

⁵⁹ <http://www.foxnews.com/politics/2015/01/29/federal-judge-blasts-doj-lawyers-in-case-fast-furious-whistleblower/>

misconduct and recommending appropriate punishment. If I am confirmed as Attorney General, I commit to ensuring that OPR continues to be a strong, independent entity, within the Department of Justice.

- f. Would you support transferring the DOJ/OPR function to the Inspector General so that there can be an independent reviews of attorney misconduct allegations at the Department?

RESPONSE: As I described above, consistent with the positions taken by previous Attorneys General, across Administrations, I support the role of the Office of Professional Responsibility in investigating attorney misconduct.

- g. If not, please explain what is special or unique about attorney misconduct that should shield it from oversight by the Department's Inspector General like all other types of misconduct?

RESPONSE: It is my understanding that OPR's extensive experience and singular focus is in investigating attorney misconduct related to the exercise of their authority to investigate and litigate, including by analyzing conduct through the lens of relevant state bar rules.

56. According to media reports, in Fairfax County, Virginia, an unarmed man, John Geer, was shot by a police officer while standing in his home, and while, according to other police officers who were present at the scene, his arms were raised above his shoulders, and he was then left unattended for an hour where he bled to death.⁶⁰

In December 2014, the Department's Civil Rights Division found the Cleveland Division of Police engaged in a pattern or practice of unreasonable and unnecessary use of force.⁶¹ The investigation was launched in March 2013 following a number of high-profile use of force incidents and requests from the community and local government to investigate.⁶²

On January 21, 2015, the Department of Justice confirmed that the following investigations are still ongoing at the Civil Rights Division,⁶³

- Shooting death of Mike Brown (Ferguson, Missouri) – initiated August 11, 2014
- Shooting death of Eric Garner (Staten Island) – initiated July 18, 2014
- Shooting death of John Geer (Fairfax County, Virginia) – initiated February 11, 2014

⁶⁰ Tom Jackman, "John B. Geer had hands up when shot by police, four officers say in documents," The Washington Post, January 31, 2015, http://www.washingtonpost.com/local/crime/officer-who-shot-john-geer-says-he-moved-hands-toward-waist-3-other-officers-say-no/2015/01/31/7cc2c0da-a7f6-11e4-a06b-9df2002b86a0_story.html.

⁶¹ U.S. Department of Justice, *Justice Department and City of Cleveland Agree to Reform Division of Police After Finding A Pattern or Practice of Excessive Force*, December 4, 2014, <http://www.justice.gov/usao/ohn/news/2014/04decpcpd.html>.

⁶² *Id.*

⁶³ Email from U.S. Department of Justice, Office of Legislative Affairs, to Staff of Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary (January 21, 2015).

- a. It is imperative that cases of alleged police misconduct are handled on a fair, impartial, and timely manner so that officers who have used force in an inappropriate way are held accountable and those who have acted lawfully are swiftly exonerated so that they may reclaim their reputations and resume their duties. If confirmed as Attorney General, will you ensure the thorough and timely resolution of these cases?

RESPONSE: We must ensure that these and other cases of alleged misconduct by law enforcement are handled in a fair, impartial, and timely manner. Similarly, we must ensure that pattern and practice investigations of police departments are conducted in a fair, impartial, and timely manner.

- b. If confirmed as Attorney General, what would you do to ensure more transparency and better statistics on law enforcement's use of deadly force *nationwide*?

RESPONSE: I understand that the FBI and the Department's Bureau of Justice Statistics carry out statistical work in this area. If I am confirmed as Attorney General, my goal will be to conduct a comprehensive review of these data collection efforts, identify information gaps, and develop plans to ensure that the Department collects and makes public accurate and timely information on all uses of force by law enforcement.

57. On December 23, 2014 Senator Leahy and I sent Attorney General Holder a letter concerning the use of cell-site simulators by law enforcement agencies.⁶⁴ According to information provided to Judiciary Committee staff by the Federal Bureau of Investigation, these devices can capture the serial numbers of thousands of cell-phones in its vicinity by mimicking cell-phone towers.

The FBI is in a unique position to shape how the device is used by law enforcement, because state and local police departments are required to coordinate their use of the device with the FBI.⁶⁵ The FBI only recently began requiring its agents to obtain a search warrant whenever the device is used as part of an FBI operation, but there are several broad exceptions that may swallow this rule.⁶⁶

For example, the FBI's new policy does not require a search warrant in cases in which the technology is used in public places or other locations at which the FBI deems there is no reasonable expectation of privacy.⁶⁷

⁶⁴ Letter from Sen. Charles E. Grassley, and Sen. Patrick Leahy, S. Comm. on the Judiciary, to Hon. Eric Holder, Attorney General, and Hon. Jeh Johnson, Secretary of Homeland Security, (December 23, 2014), <http://www.leahy.senate.gov/download/12-23-14-pjl-and-ceg-to-doj-and-dhs1>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

I am concerned about whether the FBI and other law enforcement agencies at the Justice Department have adequately considered the privacy interests of other individuals who are not the targets of the interception, but whose information is nevertheless being collected when these devices are being used. I understand that the FBI believes it can address these interests by maintaining that information for a short period of time and purging the information after it has been collected.⁶⁸ But there is a question as to whether this sufficiently safeguards privacy interests if there is insufficient oversight and transparency regarding the use of this type of technology.

- a. If confirmed as Attorney General, will you commit to reviewing the legal authority used to collect information from the cell phones of innocent third parties who are not the targets of an interception order to ensure that it meets constitutional requirements and protects their privacy interests?

RESPONSE: The Department is committed to using all law enforcement resources in a manner that is consistent with the requirements and protections of the Constitution and other legal authorities, and with appropriate respect for privacy and civil liberties. If I am confirmed as Attorney General, I will uphold that commitment.

- b. What steps would you take to strengthen oversight to ensure that there is no unauthorized retention of data collected by these devices?

RESPONSE: From my work as a United States Attorney, I know that the Department takes seriously its responsibilities concerning any data that is collected during lawful investigations. If I am confirmed as Attorney General, I am committed to taking any necessary steps to ensure that the Department's practices concerning the collection or retention of such data are lawful and respect the important privacy interests of the American people.

- c. Given the FBI's role in making the devices available to state and local authorities, do you believe the Department has any responsibility to ensure that state and local authorities have sufficient oversight and safeguards in place to prevent abuses? If so, what steps would you take to do so if confirmed?

RESPONSE: I understand the Department works with its state and local law enforcement partners and provides technological assistance under certain circumstances. In all cases, law enforcement authorities in the United States must conduct their missions lawfully and in a manner that respects the rights of the citizens they serve. The Department has a responsibility to ensure that its resources are employed to advance lawful and legitimate public safety and national security objectives. If confirmed as Attorney General, I will commit to ensuring that the Department's technological practices and its partnerships with other agencies and state and local authorities are approached with due consideration for the harmful consequences of any potential misuse of Department resources.

⁶⁸ *Id.*

58. According to the State Department, “[t]hose who patronize the commercial sex industry form a demand which traffickers seek to satisfy.”⁶⁹ Attorney General Holder has identified human trafficking and sexual exploitation of children as priority goals for investigation and litigation at the Justice Department.⁷⁰ In December 2012, Inspector General Michael Horowitz reported that three Drug Enforcement Administration agents admitted to having used their DEA Blackberry devices to arrange for paid sexual services while stationed in Cartagena, Colombia.⁷¹

These actions were an embarrassment to our nation, but the true victims are the children, women, and other vulnerable individuals who are trafficked into prostitution to satisfy this demand. In the Inspector General’s words:

Even where prostitution is legal, it is often an abusive activity that involves coercive relations and it can contribute to human trafficking, a crime that DOJ seeks to eradicate. [E]mployees who engage in the solicitation of prostitution while on official travel or when stationed in foreign countries undermine their own credibility and DOJ’s effectiveness in addressing this priority.⁷²

For this reason, I am deeply troubled to learn that the Department of Justice does not have a zero-tolerance policy requiring the dismissal of employees who engage in the solicitation of prostitution.⁷³ The Department currently employs more than 1,200 permanent positions abroad, and employees go on more than 6,100 trips a year to more than 140 countries.⁷⁴

According to a 2012 State Department cable on human trafficking:

It is the position of the U.S. government that the procurement of commercial sex can fuel the demand for sex trafficking. Women, children, and men are trafficked into the commercial sex trade *regardless of whether prostitution is legal or criminalized in a country*, and thus, the procurement of commercial sex runs the risk of facilitating or supporting human trafficking.

There are concerns that prostituted youth, including LGBT youth, are especially vulnerable to human trafficking and other forms of exploitation. Department employees should understand that a victim of sex trafficking may not appear to be under duress, given that coercion and threats of violence are often used to hold people in servitude. Indeed, there is a good chance that a sex trafficking victim will appear to be engaging in a commercial sex transaction willingly

⁶⁹ U.S. Department of State, *Trafficking in Persons Report* (June 2008), 24.

⁷⁰ U.S. Department of Justice, *Strategic Plan, Fiscal Years 2014-2018* (February 2014), 2.

⁷¹ Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Joe Lieberman, Chairman, and Sen. Susan Collins, Ranking Member, Sen. Comm. on Homeland Sec. and Gov. Affairs (Dec. 20, 2012), 3.

⁷² U.S. Department of Justice, Office of Inspector General, *Review of Policies and Training Governing Off-Duty*

Conduct by Department Employees Working in Foreign Countries (January 2015), 7.

⁷³ *Id.* at 48-50.

⁷⁴ *Id.* at ii.

Further, assumptions based on appearances as to whether or not an individual is 18 years old are frequently erroneous, as many brothel managers and pimps dress minors to look older. Purchasing sex from a minor is a serious crime under U.S. law.⁷⁵

Given the gravity of these concerns, it is unclear why the Department has *not* instituted a policy that incentivizes employees to *steer well clear* of facilitating or committing these heinous crimes.

If confirmed as Attorney General, will you implement a zero-tolerance policy that requires the dismissal of any employee who engages in the solicitation of prostitution, without exception? If not, please explain why.

RESPONSE: I believe that all government employees have a responsibility to hold themselves to the highest standards of conduct both within and outside of the workplace. This is especially true for the employees of the Department of Justice who are entrusted to enforce the law. If I am confirmed as Attorney General, I will commit to reviewing the Department's policies and procedures regarding off-duty conduct to ensure that we hold accountable those employees who do not meet these high standards.

59. The incumbent Attorney General criticized state so-called "stand your ground" laws under which a person who otherwise has a legitimate claim of self-defense is not required to flee before exercising the option of defensive force. This rule is also part of federal common law, as articulated by the U.S. Supreme Court in cases such as *Beard v. U.S.*, 158 U.S. 550, 564 (1895) and *Brown v. U.S.*, 256 U.S. 335, 343 (1921).
- a. What is your position on state stand your ground laws? If you oppose such laws, do you believe DOJ has a role in opposing such laws? If you believe that DOJ has such a role, what is it?
 - b. Under what circumstances do private citizens have the right to use force, including deadly force, to defend themselves and others from imminent threats of unlawful, deadly harm?

RESPONSE: The determination of whether a private citizen has the right to use force to defend against an imminent threat of unlawful, deadly harm is a fact-based inquiry made pursuant to state law. States have the lead in pursuing criminal offenses, and I have not had occasion to consider state "stand your ground" laws sufficiently to take a position.

60. I believe we should do everything in our power to stop the poaching of elephants, as well as the illicit trade of ivory and other wildlife products. It is my understanding that the administration is moving forward with a regulation that would make it illegal to sell items containing ivory in the United States unless the owner can prove with documentation the

⁷⁵ *Id.* at 40-41.

item is more than 100 years old. The administration claims this regulation would reduce poaching and international illicit trade in ivory.

Ivory is commonly found in chess sets, tea pots, firearms, musical instruments and myriad other objects. Can you please explain how banning the domestic sale of these legally possessed items – most of which were acquired long ago when documentation was not required – would help achieve the administration’s goals? Don’t you believe the Department of Justice should be directing resources to combat actual wildlife traffickers, much like you have done in New York?

RESPONSE: I applaud and share your commitment to protecting endangered species, like elephants and rhinos, by prosecuting those who kill and traffic in these animals. As you recognize, prosecutors in my office and throughout the Department of Justice have worked on a group of recent prosecutions involving the black market trade of rhinoceros horn, which causes similar harms as the illicit trade in elephant ivory. I understand that the Fish and Wildlife Service is working to update the regulations that govern sales of elephant ivory in the United States, but I am not familiar with the details of that process. I am confident, however, that the regulatory process will allow for broad public input in accordance with the usual process for agency rulemaking so that the Service can consider the issues you identify.

61. The Executive Office for U.S. Attorneys (EOUSA) is responsible for the administration of FOIA requests for records held by the 94 U.S. Attorneys Offices (USAOs). Annual FOIA statistics are presented in aggregate by EOUSA and do not provide FOIA performance data on individual USAOs. EOUSA reported that it had 1,525 pending FOIA requests at the start of fiscal year 2014. How many of those pending requests were pending with the Eastern District of New York?

RESPONSE: I have been informed that of EOUSA’s 1,525 total pending FOIA requests at the start of Fiscal Year 2014, 49 remained pending with the Eastern District of New York.

62. EOUSA reported in aggregate that only 191 (7%) of the 2,729 FOIA requests processed in fiscal year 2014 were “fully granted.” How many FOIA requests were processed by the Eastern District of New York and how many of them were “fully granted”?

RESPONSE: I have been informed that the Eastern District of New York processed a total of 29 FOIA requests in Fiscal Year 2014, a total of five of which were fully granted.

63. EOUSA reports the aggregate response time for all processed perfected FOIA requests. In fiscal year 2014, the median number of days for response was 90 and the average number of days was 132. What was the Eastern District of New York’s median and average number of days for response?

RESPONSE: I have been informed that this information is not readily available.

64. EOUSA reported that 1,783 FOIA requests were “backlogged” at the end of fiscal year 2014. How many FOIA requests were “backlogged” with the Eastern District of New York?

RESPONSE: At the end of Fiscal Year 2014, a total of 47 FOIA requests were “backlogged” with the Eastern District of New York.

65. As you know, the Judiciary Committee has oversight responsibility over the Department of Justice. And to help fulfill those responsibilities, last fall, one of the attorneys on my committee staff, a former Department prosecutor, traveled to Iowa to meet with federal law enforcement.

While there, he spent time in both judicial districts in Iowa. He met with the FBI, the DEA, with local law enforcement, and with the U.S. Marshals. But he was told by the Department of Justice here in Washington that the Department would not make anyone from either of the United States Attorney’s Offices in Iowa available for a meeting with him, even as a courtesy.

Are you committed to making sure Congressional staff can meet, as appropriate, with local Department of Justice personnel in the states, while of course observing all ethical rules about discussing specific cases or investigations? I think most Americans would be surprised that local U.S. Attorney’s offices are not allowed to speak with their Senator’s staff under this administration.

RESPONSE: As I testified before the Committee, if I am confirmed as Attorney General, I look forward to fostering a new and improved relationship with this Committee, the United States Senate, and the U.S. House of Representatives, and will do what I can to forge a relationship based on mutual respect and constitutional balance. In particular, I believe the oversight role of the Senate Judiciary Committee is important. If I am confirmed, I commit to you to work together to allow appropriate contacts between Congressional staff and Department officials in the field.

66. In September 2014, it was reported that the President was expected to sign an executive order that would require the Pentagon, the Justice Department, the Department of Homeland Security and other agencies to reveal more details about the size and surveillance capabilities of their drone programs. The order would also reportedly require these agencies to reveal the policies they have in place to protect privacy and civil liberties in connection with their use of drones.

The President, however, has not yet issued this executive order. Do you support the issuance of such an order, and if you are confirmed, will you commit to both explaining this delay to me and for advocating for one?

RESPONSE: I am unfamiliar with the White House's specific plans for executive action in this area. If I am confirmed as Attorney General, I look forward to studying these issues further and working together with you to identify any unresolved concerns.

67. I wrote to the Department of Justice back in October 2013 concerning its handling of a small number of cases referred to it in which National Security Agency employees intentionally and willfully abused surveillance authorities, in many cases to spy on their significant others. The press calls these cases "LOVEINT." I also spoke to Attorney General Holder about the request when he was before the committee last January. He told me he would respond soon.

It has been over a year, and I have not received a response. I understand that the overwhelming majority of those who work in our national security and intelligence communities are dedicated, law-abiding people who deserve our profound thanks for helping to keep us safe. Nonetheless, there must be appropriate accountability for those few who violate the trust placed in them.

Can you commit to me that if you are confirmed, you will respond to my letter within 30 days?

RESPONSE: Yes, if I am confirmed as Attorney General, I will commit to responding to your letter within 30 days.

68. FBI Director Comey has been talking a lot recently about the increasing inability of law enforcement officers to be able to access evidence on computers, cell phones and other devices because of encryption, even when they have obtained a valid search warrant. He is clearly worried about what he calls "Going Dark," and I hear the same from state and local law enforcement in Iowa.

On the other hand, the civil liberties community and technology companies argue that building in a door for law enforcement to bypass this encryption on their products, even when law enforcement has obtained proper legal authority, will weaken the encryption and make their customers more vulnerable to being hacked. That would obviously be a serious problem as well.

Do you have a perspective on this problem and any potential solutions? Have you felt the effects of the "Going Dark" issue in cases your office has handled?

RESPONSE: I know from my time as a United States Attorney how important lawfully authorized electronic surveillance can be. Sometimes, it is the only way to obtain evidence of terrorist or criminal activity. Lawful electronic surveillance can help law enforcement prevent crime and save lives. If I am confirmed as Attorney General, I would welcome the chance to study the issue further and to work with you and others to identify potential solutions.

69. In December 2014, President Obama announced that the administration would begin to normalize diplomatic relations with Cuba. However, it is estimated that as many as 70 fugitives from our criminal justice system are being provided political asylum there. Among them are a number of accused killers of law enforcement officers, including Joanne Chesimard, who was convicted of executing a New Jersey police officer in 1977. She subsequently escaped from prison, and is currently on the FBI's list of Ten Most Wanted Terrorists. But almost immediately after President Obama announced the change in U.S. policy toward Cuba, the Cuban government made clear that there would be no change in their refusal to hand over fugitives like Chesimard.

- a. Do you think it was appropriate for the President to change U.S. policy toward Cuba, and to provide that government the benefit of increased trade and contact with the United States, without that government agreeing to return these fugitives to our criminal justice system to face justice?

RESPONSE: I was not privy to the communications and factors considered leading up to the President's decision to change U.S. policy toward Cuba, and I am thus unable to comment on this action.

- b. If confirmed, what will you do to bring these fugitives to justice in the United States?

RESPONSE: Apprehending fugitives who are abroad is a high priority of the Department of Justice. If I am confirmed as Attorney General, I would continue to make that a top priority, whether the fugitives are in Cuba or elsewhere.

70. I was glad to hear you say during your hearing that you do not support the legalization of marijuana. As you know, in 2013, the Department of Justice decided that it would not seek to strike down state laws in Colorado, Washington, and elsewhere that have legalized the recreational use of that drug, so long as these states implement effective regulatory regimes that protect key federal interests. This policy is outlined in the August 29, 2013 Cole Memorandum.

- a. In some of these states, like Colorado, businesses are currently advertising the availability of recreational marijuana on websites and on television news programs such as 60 Minutes. To be clear, do you agree that individuals that manufacture and distribute marijuana in that state are breaking federal law, no matter what state law permits?

RESPONSE: The manufacture and distribution of marijuana is prohibited by federal law, specifically, the Controlled Substances Act (CSA), except as authorized pursuant to limited exceptions within the CSA concerning research and related activities.

- b. I understand the Department of Justice is not gathering data on the federal priorities identified in the Cole Memorandum to evaluate whether that policy needs re-visiting. Yet these priorities are already being negatively affected, including through the increasing diversion of recreational marijuana to nearby states like Iowa. This sounds to me like the Department does not want to know how its policy is functioning. Even the New York Times has editorialized that it's important to evaluate whether the states are "holding up their end of the bargain." Do you believe the Department should be systemically collecting data related to these federal priorities in a centralized place, establishing metrics, and analyzing the data for the purpose of evaluating whether the policy outlined in the Cole Memorandum is working, and if you are confirmed will you commit to taking these steps?

RESPONSE: If I am confirmed as Attorney General, I will commit that the Department will continue to consider data of all forms—including existing federal surveys on drug usage, state and local research, and, of course, feedback from communities and from federal, state, and local law enforcement—on the degree to which existing Department policies and the state systems regulating marijuana-related activity protect federal enforcement priorities and the public. The Department will continue to collect data and make these assessments through its various components, and will continue to work with the Office of National Drug Control Policy and other partner agencies throughout the government to identify other mechanisms by which to collect and assess data on the effects of these state systems.

- c. As you also mentioned in your testimony, in some of these states there is a specific problem presented by edible marijuana products falling into the hands of children. Some of these marijuana products, as well as other products containing different illegal drugs like methamphetamine, are marketed and packaged like candy. Would you support legislation to address this problem by increasing the penalties for those manufacturers or distributors of controlled substances that know, or have reasonable cause to believe, that their controlled substances will be distributed to minors? If confirmed, would you commit to working with me on such legislation?

RESPONSE: As I stated in my testimony before the Committee, the issue of edible marijuana products and the possibility of these products falling into the hands of children is of particular concern, as reflected by the Department's explicit enforcement priority of preventing the distribution of marijuana to minors, as well as the Department's enforcement priority of addressing threats to public health. If I am confirmed as Attorney General, I look forward to working with this Committee to address this issue in a comprehensive manner that most effectively protects public health and safety.

- d. Attorney General Holder has indicated that he believes that marijuana businesses in states like Colorado should have access to the U.S. banking system. Do you agree? If so, doesn't depositing the proceeds of marijuana businesses into banks violate the federal laws prohibiting money laundering, and do you believe it is appropriate for the nation's top law enforcement officer to advocate for conduct that violates those laws?

RESPONSE: Pursuant to the Department's February 14, 2014, guidance, investigations and prosecutions of offenses related to financial transactions based upon marijuana-related activity are focused on using the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats. Accordingly, in determining whether to charge individuals or institutions with offenses related to financial transactions based upon marijuana-related activity, prosecutors should assess this activity in light of the Department's stated enforcement priorities. Further, as made clear in the Department's February 14, 2014, guidance, financial institutions must continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by customers engaged in marijuana-related activity, including by conducting customer due diligence designed to identify conduct that relates to any of the eight priority factors. As the Department of Justice's and the Department of the Treasury's FinCEN guidance are designed to complement each other, it also is essential that financial institutions adhere to guidance issued by FinCEN on this subject.

71. I have concerns with this Administration's preference to treat al-Qaeda terrorists as criminal defendants with the same rights as U.S. citizens, as opposed to unlawful combatants subject to military detention and prosecution under the law of war. Below is a hypothetical situation that could well present itself to you if you are confirmed.

If on your first day as Attorney General, the U.S. military captured Ayman Al-Zawahiri, the current leader of Al-Qaeda, and transported him to a ship in the Mediterranean Sea or the Persian Gulf, what advice would you give the President about his detention, interrogation, and possible trial, and what factors would you weigh in formulating that advice?

- a. Specifically, would you recommend that he be sent to Guantanamo Bay for detention and interrogation with those who planned the 9/11 attacks? If not, where would you advise that this detention and interrogation take place? And by whom? Why?
- b. When, if at all, would you recommend that he be read Miranda rights? Why?
- c. Would you advise that he be tried in civilian court or through the military commissions system, and why?

RESPONSE: Every case presents its own unique set of facts that would bear on the decision about the appropriate trial venue of a terrorist; therefore, I cannot comment on this specific hypothetical without additional information. If I am confirmed, I can assure you that I would support the careful evaluation and use, as appropriate, of all lawful options in the fight against terrorism, including military, diplomatic, economic, law enforcement, and intelligence activities,

and including law of war detention and prosecutions in federal courts or in military commissions in appropriate cases. From my firsthand experience as a United States Attorney, I can attest to the ability of our criminal justice system to serve as one effective tool among many to address the threat posed by terrorists and to gather valuable intelligence that aids in the disruption of terrorist organizations.

I agree with the President's commitment not to add to Guantanamo's population. I am concerned about the adverse effect of Guantanamo on our national security interests and cooperation with our allies, as identified by the President and the Department of Defense. As a United States Attorney, I have experienced firsthand the concerns Guantanamo raises in the context of trying to secure the cooperation of foreign governments in terrorist cases.

With respect to Miranda rights, I believe that FBI policy makes clear that the first priority for interrogation of terrorists is to gather intelligence. In the civilian justice system, the Miranda rule generally requires that, for statements to be admissible in court, an individual must be advised of his or her right to remain silent and the right to have counsel present during a custodial interrogation. However, the Miranda warning would not be required for interrogations that are solely for the purposes of intelligence collection and will not be used in a criminal prosecution, and there is also a public safety exception as articulated by the Supreme Court in *New York v. Quarles* under which public safety-focused questions may be admissible at trial even if Miranda warnings are not provided. The government uses that exception to the fullest extent possible to gather intelligence and identify imminent threats. I believe that our first priority should be to exhaust all appropriate avenues of inquiry to identify imminent threats posed by terrorists who are arrested or detained, or by others with whom they may be working, but we can do so while preserving prosecution options.

72. Law enforcement and national security officials have discussed how critical the surveillance authorities under Section 702 of the Foreign Intelligence Surveillance Act were to stopping a plot by Najibullah Zazi, an American who was born in Afghanistan, to bomb the New York City subway in 2009. Your office, the Eastern District of New York, handled that case.

How important were these authorities to that case, and how were they used to identify and stop Mr. Zazi from killing an untold number of Americans?

RESPONSE: It is my understanding that Section 702 authorities played an important role in uncovering Najibullah Zazi's plot to bomb the New York City subway. In 2009, using Section 702 to target the email of a Pakistan-based al-Qaida terrorist, the National Security Agency (NSA) discovered that the terrorist was communicating with an unknown person located in the United States about a plot involving explosives. NSA provided this information to the FBI, which used its investigative tools to identify the unknown person as Mr. Zazi. The FBI then tracked Mr. Zazi as he left Colorado a few days later to drive to New York City, where he and co-conspirators were planning to detonate explosives in the New York City subway system in Manhattan. Law enforcement apprehended Mr. Zazi and his coconspirators, and Mr. Zazi pleaded guilty in the United States District Court for the Eastern District of New York to

conspiracy to use weapons of mass destruction against persons or property in the United States, conspiracy to commit murder in a foreign country, and providing material support to al-Qaeda. Zazi's New York City-based co-conspirators were later convicted for their roles in the plot as well. Without the original tip from NSA to the FBI, the plot might not have been disrupted.

73. As you probably know, I've been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors, and the inability of family farmers and producers to obtain fair prices for their products. I've also been concerned about the possibility of collusive and anti-competitive business practices in the agriculture sector. Do I have your commitment that the Antitrust Division will pay close attention to agribusiness competition matters? Can you assure me that agriculture antitrust issues will be a priority for the Justice Department if you are confirmed to be U.S. Attorney General?

RESPONSE: Agriculture is an important part of the nation's economy. I fully support the Antitrust Division's (Division) resources that are used to police those markets. I understand that the Division has a number of attorneys who focus on agricultural matters, including mergers and conduct aimed at acquiring or exercising market power. I also understand that the Division has a dedicated Special Counsel for Agriculture, who engages in outreach with the agricultural community, including the Department of Agriculture and the state attorneys general, to uncover potential anticompetitive activity, and who works with the litigating sections to evaluate and investigate complaints. If I am confirmed as Attorney General, I will be committed to ensuring that the Antitrust Division remains vigilant in policing anticompetitive mergers and conduct in agricultural markets.

74. Historically, the Justice Department has not paid much attention to monopsony (buyer power) issues, focusing more on monopoly (seller power) and consumer effects. Do you intend to use your antitrust authorities to look into monopsony issues in the agriculture sector? Please explain.

RESPONSE: My understanding is that the antitrust laws cover buyer power, also known as monopsony power, and the 2010 revision to the Horizontal Merger Guidelines issued by the Department and the Federal Trade Commission includes a separate section on buyer power. I am also aware that in conjunction with the Department requiring Tyson Foods to divest its sow purchasing business in order to proceed with an acquisition in 2014, Assistant Attorney General for the Antitrust Division, William J. Baer, noted that, "farmers are entitled to competitive markets for their products." I agree with that statement and believe that abuse of monopsony power is an appropriate area for antitrust enforcement.

75. In 1986, Congress amended the Lincoln-era False Claims Act to strengthen the right and incentives of private citizens to help the federal government hold contractors accountable for submitting false and fraudulent claims. Those whistleblowers, called relators, uncover the vast majority of incidents of waste, fraud, and abuse in federal contracting. In Fiscal

Year 2013, relators accounted for 89 percent of new FCA actions.⁷⁶ And the FCA overall has been hugely successful in recovering funds for the federal government. In Fiscal Year 2014 alone, the FCA was responsible for nearly \$6 billion in recovered funds.⁷⁷ Because the FCA is so effective, well-funded interests in various industries are always attempting to undermine it.

- a. How many FCA complaints have you received during your tenure as U.S. Attorney for the Eastern District of New York? In how many of those cases did your office intervene? What policies and procedures did you look to in reaching these intervention determinations?

RESPONSE: According to the records from my Office, from May 2010 to date, 94 qui tam cases were filed in the Eastern District of New York. During the same time period, my Office intervened or partially intervened in six of those qui tam matters. In addition, during this time period our Office intervened in cases that were filed before I took office, and in some of the 94 cases filed after I took office, the government is still considering whether intervention is warranted. When making decisions on whether to intervene, or to recommend intervention, in a qui tam case, I evaluate many factors, including the potential merits of the case, the potential damages involved, and whether there are other reasons to dedicate resources to the matter.

- b. If confirmed, will you vigorously enforce the provisions of the False Claims Act, and will you devote adequate resources to investigating and prosecuting FCA cases?

RESPONSE: The False Claims Act, and its qui tam provisions, play a critical role in the Department's ability to ensure that those who do business with the Government do so honestly and accurately. As your question notes, the Department recovered nearly \$6 billion in settlements and judgments in Fiscal Year 2014, which marks the fifth straight year that False Claims Act recoveries have exceeded \$3 billion. Moreover, since 1986, the Department, working with United States Attorneys' Offices, government agencies, and private citizens, has returned more than \$45 billion in public monies to government programs and the Treasury.

Of the nearly \$6 billion recovered by the Department this past Fiscal Year, nearly \$3 billion were associated with qui tam cases. Since 1986, the Department has recovered over \$30 billion in qui tam cases. If I am confirmed as Attorney General, I will continue my longstanding, robust use of the False Claims Act and its qui tam provisions, including by ensuring that the Department has adequate resources to investigate and pursue FCA cases.

- c. What should DOJ's policy be with respect to the settlement of False Claims Act cases which the Justice Department does not join, where the law provides that the qui tam plaintiff may prosecute the action? For example, is it the policy of the

⁷⁶ Department of Justice, Civil Division, Fraud Statistics – Overview (Oct. 1, 1987 – Sept. 30, 2013).

⁷⁷ Press Release, Department of Justice, Justice Department Recovers Nearly \$6 Billion from False Claims Act Cases in Fiscal Year 2014 (Nov. 20, 2014).

DOJ to undertake direct negotiations with the defendant without qui tam counsel in such cases? Are there any circumstances in which it would be appropriate for the Justice Department to negotiate settlement of a non-intervened FCA case without qui tam counsel's involvement?

RESPONSE: The United States is the real party in interest in every qui tam case, including cases in which it may not elect to intervene (at least initially). Accordingly, it is my understanding that the Department continues to monitor such matters and may, in appropriate circumstances, further investigate, seek to intervene for good cause, and/or attempt to negotiate a settlement.

It is my further understanding that, in determining whether to settle a False Claims Act case, including a qui tam case, the Department evaluates whether it would be in the public interest to reach an out-of-court resolution. As in all investigations, the factors considered as part of such an evaluation will depend on the particular facts and circumstances of each case.

76. What should DOJ's policy be with respect to the settlement of False Claims Act cases which the Justice Department does not join, where the law provides that the qui tam plaintiff may prosecute the action? For example, is it the policy of the DOJ to undertake direct negotiations with the defendant without qui tam counsel in such cases? Are there any circumstances where it would be appropriate for the Justice Department to negotiate settlement of a non-intervened FCA case without qui tam counsel's involvement?

RESPONSE: As noted above, the United States is the real party in interest in every qui tam case, including cases in which it may not elect to intervene (at least initially). Accordingly, it is my understanding that the Department continues to monitor such matters and may, in appropriate circumstances, further investigate, seek to intervene for good cause, and/or attempt to negotiate a settlement.

It is my further understanding that, in determining whether to settle a False Claims Act case, including a qui tam case, the Department evaluates whether it would be in the public interest to reach an out-of-court resolution. As in all investigations, the factors considered as part of such an evaluation will depend on the particular facts and circumstances of each case.

77. What should DOJ's policy be with respect to multipliers on single damages in False Claims Act cases? Are there ever instances where the Justice Department should seek to collect less than single damages?

RESPONSE: As noted above, there may be times when the public interest is served by reaching an out-of-court resolution in a particular case. The factors supporting such a result may, in some circumstances, counsel in favor of a resolution that is less than the Government's potential loss, including, for example, where the defendant lacks the resources to pay a higher amount.

78. On August 1, 2013, you wrote to me in your capacity as the U.S. Attorney for the Eastern District of New York seeking information in connection with an investigation conducted by your office. The request was signed on your behalf by Assistant U.S. Attorney James D. Gatta. Your letter sought copies of two letters and their attachments from my office—one letter addressed to Representative Elijah Cummings and the other addressed to me and Representative Darrell Issa.

The letters your office sought copies of were written by Joshua Levy, the attorney for David Voth. Mr. Voth was the ATF Group Supervisor responsible for Fast and Furious. The letters from Mr. Levy contained numerous attachments of internal ATF and DOJ documents in an attempt to defend Mr. Voth's role in Fast and Furious and attack the whistleblowers who eventually exposed the operation. It is unclear how Mr. Levy or Mr. Voth came into possession of some of the documents. In addition to Mr. Levy providing his letter and attachments to my office, it appears someone provided them to the press as well.⁷⁸

Following receipt of your letter, Mr. Gatta also contacted the Office of Senate Legal Counsel seeking permission to conduct an interview with members of my staff. Following a cordial and cooperative discussion, there was no further follow-up from your office.

- a. Were you personally aware of this document request or interview request at the time, and did you approve either of them?
- b. What potential crime was your office investigating?
- c. What were the facts and circumstances that served as the predicate for the investigation?
- d. What nexus to the Eastern District of New York justified the involvement of your office?
- e. What is the current status of the investigation?
- f. In your testimony before the Committee, you indicated that your involvement with Fast and Furious-related matters was limited to your service on the Attorney General's Advisory Committee, which focused on disseminating lessons learned from the flawed investigative techniques to your U.S. Attorney colleagues. Yet your August 2013 letter request to me suggests that your office investigated something involving the ATF Group Supervisor in Phoenix most directly responsible for the operation. Please explain the apparent discrepancy.

RESPONSE: Yes, I was aware of the matter and the investigative steps you have referred to in your letter. The inquiry by my Office about which you have inquired did not pertain to any matters investigated during Operation Fast and Furious nor the Department's interactions with Congress in connection with the Congressional investigation of Operation Fast and Furious itself, and it did not result in charges. As you may know, the Department does not disclose information about investigations that do not result in charges because doing so would not be fair to those who may have been investigated.

⁷⁸ Associated Press, "Key ATF agents in Fast and Furious case blame prosecutors," April 16, 2012, <http://azcapitoltimes.com/news/2012/04/16/key-atf-agents-in-fast-and-furious-case-blame-prosecutors/>.

With respect to your question regarding the nexus of the Eastern District of New York, I would note that there need not always be a nexus between a United States Attorney's Office (USAO) and a matter it investigates. For instance, a case in which a USAO with a nexus is recused from a matter, the Department commonly seeks out another office without such a nexus to conduct the investigation.

During my testimony before the Committee, I testified that I was not involved in Operation Fast and Furious or the Department of Justice's response to the Congressional investigation regarding Operation Fast and Furious. The matter about which you have inquired above was, as described here, not related to the underlying investigation of Operation Fast and Furious nor the Department's interactions with Congress. Accordingly, there was no discrepancy between my testimony and the fact of the investigation you have referenced.

79. The Firearms Owners Protection Act of 1986 amended the Gun Control Act of 1968 by adding the following language, now located in 18 U.S.C. 926(a):

No...rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.⁷⁹

During the course of my investigation into ATF's Operation Fast and Furious, my office received allegations from multiple gun dealers in Arizona that ATF personnel routinely photocopy all ATF form 4473s (Firearms Transaction Record) and book bound entries in connection with routine annual inspections of licensed gun dealers. Dealers from other parts of the country have made similar allegations more recently. Although federal firearms licensees felt uncomfortable turning over the records of lawful gun purchases *en masse*, they also felt obligated to comply for fear of regulatory reprisals from ATF. These administrative requirements could be used to create a national gun registry of law-abiding gun owners, which is specifically prohibited by law.

Also in the course of the Fast and Furious investigation, Congress learned about the ATF's use of the Suspect Gun Database, a feature of ATF's Firearms Tracing System. ATF agents added extensive numbers of firearms into the Suspect Gun Database. It is unclear what, if any, administrative guidelines detail when it would be appropriate to do so. The Suspect Gun Database could be used to track information about gun owners even when ATF does not have enough evidence to meet the legal standard for seizing a firearm or any other articulable criteria for entering the information about the gun and the purchaser into a database. With no clear criteria for adding a firearm connected to an

⁷⁹ Firearms Owners Protection Act, 1986; Pub. L. No. 99-308, May 19, 1986; 100 Stat. 449, 459.

investigation to the Suspect Gun Database, the decision appears to be largely up to the discretion of an individual ATF agent.

- a. Does the Suspect Gun Database, which contains purchaser, dealer and transaction information, comply with the Firearms Owners' Protection Act of 1986? If so, what is the legal basis for that claim? And if confirmed, what steps would you take to ensure that ATF only adds information about gun owners into its databases in compliance with the law?
- b. If confirmed, what steps would you take to determine the extent to which ATF is photocopying or photographing all ATF form 4473s and book bound entries in connection with routine annual inspections of licensed gun dealers?
- c. Do you agree that such a practice would be tantamount to a national gun registry of all gun owners who purchased firearms from a licensed dealer? If so, please explain what steps you would take, if confirmed, to ensure that no such practice was sanctioned or permitted by the Justice Department? If not, please explain why not.
- d. Does 18 U.S.C. Section 923(g)(7) govern the addition of data to the Suspect Gun Database and does it impose any limiting criteria or legal standards on the addition of data to the Suspect Gun Database?
- e. What administrative steps would you propose to ATF to ensure that only firearms truly related to a criminal investigation are added to the Suspect Gun Database?
- f. Will you require ATF to purge any purchaser information that is illegally in its databases, including in the Multiple Sales System, which, under ATF's own rules, must be taken out of the system after two years if there is no connection to any firearms trace?

RESPONSE: As United States Attorney, I have limited knowledge of the operation of the Suspect Gun Program. If I am confirmed as Attorney General, I look forward to familiarizing myself with the manner in which it is populated, used, and maintained to ensure that it complies with all applicable laws. I am aware that GAO is conducting a review of this program as well, and if confirmed, I look forward to working with the GAO on their review of this issue.

80. In 2012, the Department of Justice and Securities Exchange Commission (SEC) issued joint guidance detailing Foreign Corrupt Practices Act (FCPA) enforcement information and the agencies' enforcement priorities. While the guidance clarified portions of the law and some of the agencies' enforcement theories, many companies and individuals seeking to comply with the FCPA have asked for further, and continued, clarification. This request was expressed to Attorney General Eric Holder and Assistant Attorney General Leslie Caldwell during previous Committee hearings.

- a. If confirmed, will you commit to working with companies and individuals to further improve the Guidance?

RESPONSE: If I am confirmed as Attorney General, I look forward to continuing the outreach efforts that the Department has been making with the private sector to understand their needs and concerns and, if necessary, update and/or improve the Guide.

- b. Will you commit to updating the Guidance, when necessary, to reflect changes in DOJ enforcement practices?

RESPONSE: If I am confirmed as Attorney General, I look forward to continuing efforts that the Department has been making to provide meaningful guidance in the FCPA context where necessary and appropriate.

81. In the area of FCPA enforcement, there is little guiding case law available for compliance practitioners to rely on. However, the FCPA Guidance that was issued in 2012 took an important first step in helping practitioners understand how the enforcement agencies' interpret the statute. The Guidance includes six anonymized examples of declinations—instances where the DOJ and SEC declined to bring FCPA-related enforcement actions in recognition of the companies' timely voluntary disclosures, meaningful cooperation, and sophisticated compliance policies and controls. The continued publication of FCPA declinations would foster greater FCPA compliance by providing practitioners with a better understanding of how the FCPA is interpreted. If confirmed, would you support increasing DOJ transparency regarding declination decisions?

RESPONSE: As you know, the United States Attorney's Manual provides a mechanism to allow for notification to an individual (or entity), where appropriate, that an investigation as to that individual (or entity) is being closed. If I am confirmed as Attorney General, I look forward to continuing the Department's practice of providing meaningful guidance in the FCPA context (such as procedures to respond to opinion requests) and of actively pursuing and implementing means by which declinations and other information about the decision to prosecute, or not, can be responsibly and appropriately shared.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 18, 2015**

QUESTIONS 1-18 FROM CHAIRMAN GRASSLEY

HSBC: As United States Attorney for the Eastern District of New York, you found that HSBC had laundered, “at least \$881 million in drug trafficking proceeds – including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in Colombia.”¹ Yet to date, you have not charged or fined a single HSBC employee. In your response to my questions for the record, you said that you “carefully considered whether there was sufficient admissible evidence to prosecute an individual and whether such a prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney’s Manual.”

1. In the course of your investigation, which individuals at HSBC do you believe were most culpable for this money laundering?

RESPONSE: As explained in the Statement of Facts attached to the Deferred Prosecution Agreement (DPA) filed with the Court on December 11, 2012, as a result of “concurrent [anti-money laundering] failures” at HSBC Bank USA and HSBC Mexico, at least \$881 million in drug trafficking proceeds “were laundered through HSBC Bank USA without being detected.” Note that we did not charge HSBC with money laundering. Rather, HSBC’s failure to maintain an effective anti-money laundering program violated the Bank Secrecy Act by creating a corporate environment that failed to stop others from laundering money through HSBC. Although grand jury secrecy rules prevent me from discussing the facts involving any individual or entity against whom we decided not to bring charges, as I do in all cases in which I am involved, I and the dedicated career prosecutors handling the investigation carefully considered whether there was sufficient admissible evidence to prosecute individuals at HSBC and whether any such prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney’s Manual.

2. What consequences or accountability, if any, were you able to impose on those individuals through the deferred prosecution agreement? If none, please explain why not.

RESPONSE: Our prosecution of HSBC resulted in a number of consequences to the individuals who oversaw HSBC’s anti-money laundering and sanctions compliance programs during the relevant time period. As noted above, the weaknesses in these programs allowed others to launder money through HSBC. Virtually all of the senior executives who oversaw HSBC’s flawed compliance programs were replaced. Furthermore, HSBC “clawed back” bonuses for senior executives who oversaw the anti-money laundering program. HSBC also took a number of steps to correct the lack of accountability over its anti-money laundering and sanctions

¹ Press Release, U.S. Department of Justice, Office of Public Affairs, HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement (Dec. 11, 2012).

compliance programs. These steps included: restructuring its executive bonus system so that any executive's bonus is dependent upon that executive meeting compliance and anti-money laundering standards; reorganizing its anti-money laundering department to elevate its status within the institution, including having the anti-money laundering director report directly to the Board of Directors and senior management; simplifying its control and reporting structures for the entire organization, which enables HSBC to better understand and address anti-money laundering and sanctions risks worldwide; and taking significant steps to promote the sharing of information within the organization. As described in detail below, through the DPA, the Department also secured from HSBC a commitment to U.S. compliance standards throughout the world.

3. Why do you believe that concluding an investigation into \$881 million in money laundering without a single indictment or fine of an individual is a satisfactory result?

RESPONSE: As discussed in response to question 1, the HSBC investigation stemmed from the prosecution and conviction of several money launderers who took advantage of HSBC's lax controls and resulted in charges that HSBC violated the Bank Secrecy Act. That investigation revealed systemic flaws in the bank's anti-money laundering regime, which led to the Department's scrutiny of the bank. As the United States District Judge overseeing the case observed in his opinion approving the DPA, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for it accomplishes a great deal." For example, the anti-money laundering provisions of the Bank Secrecy Act apply only to domestic U.S. financial institutions. The DPA requires HSBC to engage in anti-money laundering and compliance efforts beyond the requirements of the Bank Secrecy Act, and it requires such efforts worldwide, and that HSBC follow the highest or most effective anti-money laundering standards available in any location in which it operates. That means, at a minimum, all of HSBC worldwide must adhere to U.S. anti-money laundering standards. We could not have accomplished this by obtaining a conviction at trial. This provision of the DPA represents a significant benchmark for future anti-money laundering compliance and enforcement. In addition, the other terms of the DPA are perhaps the most stringent ever imposed on a financial institution. The DPA has a five-year term, which is among the longest that has ever been imposed on a financial institution for anti-money laundering or sanctions violations. This term reflects the seriousness of HSBC's conduct and allows for an extended period during which the government will closely monitor HSBC. HSBC is also required to retain and pay for an independent monitor to ensure that remedial measures are implemented. The DPA also ensures that HSBC will continue to cooperate with the government in any criminal investigation for the term of the agreement and explicitly does not bind the Department's Tax Division or Fraud Section of the Criminal Division. Additionally, HSBC was required to forfeit \$1.256 billion, which was the largest ever forfeiture in a bank prosecution to that point.

4. Did you communicate with any bank regulators regarding your investigation of HSBC? If so, who did you communicate with? Please describe the communications in detail and explain what actions, if any, you took as a result.

RESPONSE: I or other Department attorneys working on the case communicated with regulators at the Federal Reserve, the Office of the Comptroller of the Currency, the Department of the Treasury, the Federal Deposit Insurance Corporation, and appropriate foreign counterparts. In HSBC, as in many cases involving financial institutions, regulators were conducting parallel investigations, so there were communications between the regulators and the Department with regard to the facts of the investigations. In addition, in the HSBC case, as in many cases involving financial institutions, we conferred with regulators to test HSBC's arguments regarding regulatory and collateral consequences and to better understand the processes that regulators would follow in the wake of the case's resolution, including whether those processes were mandatory or discretionary. As I recall, the regulators provided us information regarding statutory requirements, but did not opine on how they might exercise their discretion, nor did the regulators provide any substantive opinions on the potential economic consequences of a criminal charge. We considered the responses we received from regulators in analyzing the nine factors in the Department's Principles of Federal Prosecution of Business Organizations. However, consideration of potential collateral consequences was but one factor among many we analyzed.

5. Did you communicate with any economists regarding your investigation of HSBC? If so, who did you communicate with? Please describe the communications in detail and explain what actions, if any, you took as a result.

RESPONSE: I did not communicate with economists regarding the investigation of HSBC. I am not aware of anyone else within the Department communicating with economists regarding the investigation.

Whistleblower Documents: Recent news reports have referenced at least two sets of whistleblower documents relating to HSBC. According to the International Consortium of Investigative Journalists (ICIJ), the source of one set of documents is HSBC IT specialist Hervé Falciani.² The source for the other is reportedly former HSBC Vice President and Client Relationships Manager John Cruz.

Hervé Falciani: While at HSBC Private Bank (Suisse) in Geneva with access to a Customer Relationship Management (CRM) system for the bank, Falciani reportedly "gained access to and collected unencrypted bank data."³ Falciani reportedly provided the data to French authorities, who "shared it with other governments in 2010, leading to

² Martha M. Hamilton, *Whistleblower? Thief? Hero? Introducing the Source of the Data that Shook HSBC*, International Consortium of Investigative Journalists (Feb. 8, 2015), available at: <http://www.icij.org/project/swiss-leaks/whistleblower-thief-hero-introducing-source-data-shook-hsbc>.

³ Martha M. Hamilton, *Whistleblower? Thief? Hero? Introducing the Source of the Data that Shook HSBC*, International Consortium of Investigative Journalists (Feb. 8, 2015), available at: <http://www.icij.org/project/swiss-leaks/whistleblower-thief-hero-introducing-source-data-shook-hsbc>.

prosecutions or settlements with individuals for tax evasion in several countries.”⁴ According to the ICIJ, “Nations whose tax authorities received the French files include the U.S., Spain, Italy, Greece, Germany, Britain, Ireland, India, Belgium and Argentina.”⁵

John Cruz: A former Vice President and Client Relationships Manager for HSBC, Cruz spoke with IRS criminal investigators in Colorado in early 2012 and provided approximately one thousand pages of documents and 30 hours of audio recordings to the IRS and the Securities and Exchange Commission in whistleblower submissions in July 2012. He also provided the material to the Department of Justice in September 2012, more than two months before your office filed the deferred prosecution agreement on December 11, 2012.

6. According to public reporting about the Falciani documents, they indicate that HSBC did not merely launder money for drug cartels, it also helped launder money for dictators, arms dealers who sold mortars to child soldiers, and traffickers in blood diamonds. Descriptions of the Cruz documents also suggest that the extent of HSBC’s criminal conduct may not have been fully described in the Statement of Facts associated with the DPA reached with the government. If HSBC did not inform the government about the ongoing criminal conduct allegedly demonstrated by the Falciani and Cruz documents:
 - a. Did HSBC provide any of the Falciani or Cruz documents to the Department?

RESPONSE: To the best of my knowledge, HSBC did not provide any of the Falciani documents to my Office. I understand that investigators spoke with and received documents from Mr. Cruz, and after speaking with Mr. Cruz, required information from HSBC; I am not aware at this time whether HSBC then supplied documents identical to those that Mr. Cruz had supplied.

- b. If HSBC did provide these documents to the Department, why was the conduct evidenced in them not charged in the Information, included in the Statement of Facts, or otherwise brought to the attention of the court?

RESPONSE: With respect to the Falciani documents, as stated in response to question 6a, to my knowledge, HSBC did not provide them to my Office. Investigators considered the information and documents provided by Mr. Cruz, and took appropriate additional investigative steps. We believe that through the DPA, we ultimately reached the most favorable resolution based on the sufficiency of the admissible evidence and application of the Department’s Principles of Federal Prosecution of Business Organizations. I should reiterate, however, that the DPA reached with HSBC in 2012 addressed only the charges filed in the criminal information, which are limited to violations of the Bank Secrecy Act for failure to maintain an adequate anti-

⁴ Gerard Ryle et al., *Banking Giant HSBC Sheltered Murky Cash Linked to Dictators and Arms Dealers*, International Consortium of Investigative Journalists (Feb. 8, 2015), available at: <http://www.icij.org/project/swiss-leaks/banking-giant-hsbc-sheltered-murky-cash-linked-dictators-and-arms-dealers>.

⁵ *Id.* (emphasis added).

money laundering program and sanctions violations. The DPA explicitly does not provide any protection to HSBC against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA explicitly mentions that the agreement does not bind the Department's Tax Division or the Fraud Section of the Criminal Division.

- c. Paragraph 6 of HSBC's DPA requires it to fully cooperate with the Department in its investigation of HSBC and related parties. If HSBC failed to provide the Falciani or Cruz documents to the Department, isn't that a violation of HSBC's obligation to fully cooperate with the Department?

RESPONSE: As you note, the DPA requires HSBC to cooperate fully with the Department on an ongoing basis. This requirement applies not only to Bank Secrecy Act and sanctions violations, but also any related investigations. In the event of a failure to comply with the DPA—including the requirement to cooperate—we would take appropriate remedial action.

- d. Paragraph 16 of HSBC's DPA permits the Department to declare that HSBC has breached the agreement, which would then allow it to prosecute HSBC for the conduct set forth in the related Statement of Facts. If HSBC failed to provide the Falciani or Cruz documents to the Department, isn't that a breach of the DPA? If so, why shouldn't the Department seek to prosecute HSBC for the conduct set forth in the Statement of Facts?

RESPONSE: As stated in response to question 6c, in the event of a failure to comply with the DPA—including the requirement to cooperate—we would take appropriate remedial action.

- e. Is there an ongoing investigation by any component of the Department into the conduct evidenced in the Falciani or Cruz documents? If so, when was that investigation initiated?

RESPONSE: As described above, the DPA reached with HSBC in 2012 explicitly does not provide any protection against prosecution for conduct outside of that described in the Statement of Facts, and does not bind the Department's Tax Division or the Fraud Section of the Criminal Division. I appreciate your understanding that in accordance with Department policy and applicable law, as a general matter, the Department can neither confirm nor deny any particular investigation, nor comment about inquiries of an investigative nature.

- 7. The Falciani and Cruz documents reportedly support allegations that, among other things:
 - a. HSBC engaged in sophisticated tax evasion;
 - b. HSBC had laundered money and helped evade taxes for associates of Haitian dictator Jean Claude "Baby Doc" Duvalier and Syrian dictator Bashar al Assad;
 - c. HSBC laundered money and helped evade taxes for Katex Mines Guinee, a company which helped supply arms to child soldiers in Liberia;

- d. HSBC laundered money and helped evade taxes for Emmanuel Shallop, who has since been convicted of dealing in blood diamonds;
- e. HSBC created codenames for tax evasion clients, for example Australian financier Charles Goode was referred to as "Mr. Shaw;"
- f. an HSBC manager specifically advised Keith Humphreys, a British client, on how to evade taxes by making "withdrawals from 'cash points' when they are outside the UK."⁶

Did your office have access to the Falciani or Cruz documents prior to the execution of the DPA? If not, please explain why not.

RESPONSE: To my knowledge, my Office did not have access to the Falciani documents prior to execution of the DPA. I am not aware of whether or how the information was conveyed to the Department, nor do I have information about why my office did not have access to it. I understand that investigators did speak with and receive information and documents from Mr. Cruz. I should note that the DPA reached with HSBC addresses only Bank Secrecy Act and sanctions violations and explicitly provides no protection from prosecution for conduct outside of the Statement of Facts.

- 8. Regardless of how you may have known, if you did know about the information in the Falciani or Cruz documents before the DPA was executed, why did you think that justice was served by not charging HSBC with that conduct or otherwise bringing it to the court's attention in connection with the prosecution?

RESPONSE: I do not recall reviewing or being aware of the information in the Falciani documents before the DPA was executed. With respect to the documents and information provided by Mr. Cruz, they were reviewed during the course of the investigation.

- 9. Regardless of how you may have known, if you did know about the information in the Falciani or Cruz documents before the DPA was executed, what effect if any did this have on your decision to approve the agreement? If not, would this have affected your decision to approve the agreement had you know the information? Please explain.

RESPONSE: As I previously stated, I do not recall reviewing or being aware of the information in the Falciani documents before the DPA was executed, and cannot now speculate as to whether or how receiving them then may have affected our investigation. We did consider documents and information provided by Mr. Cruz.

⁶ David Leigh et al., Catalogue of malpractice endorsed by bankers laid bare in HSBC files, *The Guardian* (Feb. 8, 2015).

10. The DOJ's deferred prosecution agreement allowed HSBC to retain its American banking charter. Please explain why you believe that was appropriate.

RESPONSE: The Department does not decide whether or not any institution is allowed to retain its banking charter. Those decisions are made by the institution's regulators. In the case of HSBC in the United States, it is my understanding that the lead regulator is the Office of the Comptroller of the Currency.

11. Were you aware of Mr. Falciani submissions to French authorities, which were reportedly shared with the United States prior to the execution of the DPA? If so, what actions if any did you take to investigate the information provided? If not, please explain why not.

RESPONSE: As described above, I do not recall reviewing or being aware of the information in Mr. Falciani's submission to French authorities prior to the execution of the DPA.

12. Were you aware of Mr. Cruz's whistleblower submissions to the IRS, SEC, and Justice Department prior to the execution of the DPA? If so, what actions if any did you take to investigate the documents he provided? If not, please explain why not.

RESPONSE: As stated above, investigators did speak with and receive documents and information from Mr. Cruz. Based on the information he provided, we took appropriate additional investigative steps, including requiring additional information from HSBC. Investigators carefully considered the information he provided as we considered whether there was sufficient admissible evidence to prosecute violations at HSBC and whether any such prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney's Manual. Ultimately, HSBC entered into a DPA that required remarkable reforms based on Bank Secrecy Act and sanctions violations, and that explicitly provides no protection from prosecution for conduct outside of the Statement of Facts.

HSBC Forfeiture: In deciding to pursue a forfeiture DPA with HSBC, rather than a criminal prosecution, you stated that your office "carefully considered whether there was sufficient admissible evidence to prosecute an individual and whether such a prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney's Manual". As you are aware, the Department's Equitable Sharing program would allow the HSBC forfeiture proceeds to be directly shared with the participating investigative agencies involved, including, for example, the New York County District Attorney's Office.

13. Please list the state and local law enforcement agencies involved in the HSBC investigation and/or the negotiations that resulted in the DPA.

RESPONSE: The Bank Secrecy Act portion of the HSBC investigation was conducted by Homeland Security Investigations' El Dorado Task Force and included agents and investigators

from Homeland Security Investigations, Internal Revenue Service – Criminal Investigation, and the Queens County District Attorney’s Office. The sanctions portion of the HSBC investigation was conducted in partnership with the New York County District Attorney’s Office and investigated by agents from the Federal Bureau of Investigation.

14. Which of these agencies, if any, have submitted requests for Equitable Sharing?

RESPONSE: As I understand it, the \$881 million related to the Bank Secrecy Act case was forfeited by Homeland Security Investigations within the Department of Homeland Security. The Department of the Treasury would have handled any requests for equitable sharing with regards to those funds. The \$375 million related to the sanctions case was forfeited by the Federal Bureau of Investigation. The New York County District Attorney’s Office submitted a request for equitable sharing to the Department of Justice and received approximately \$168 million.

15. How much money has been requested by each of these agencies through Equitable Sharing?

RESPONSE: As stated in response to question 14, my understanding is that the Justice Department handled equitable sharing requests for the \$375 million related to the sanctions case. The New York County District Attorney’s Office was the only requestor for that portion of the case and received approximately \$168 million.

16. How much money, if any, has been disbursed to each of these agencies?

RESPONSE: As stated in response to question 14, my understanding is that the Justice Department handled equitable sharing requests for the \$375 million related to the sanctions case. The New York County District Attorney’s Office was the only requestor for that portion of the case and received approximately \$168 million.

17. Can you confirm that these state and local law enforcement agencies were not incentivized to pursue a forfeiture DPA, in lieu of criminal prosecution, due to the prospect of winning a multimillion dollar Equitable Sharing disbursement?

RESPONSE: The ability to pursue equitable sharing of forfeited funds is the same whether funds are forfeited pursuant to a DPA or as a result of a criminal conviction.

18. While U.S. Attorney for the Eastern District of New York, did your office approve any settlement agreements that contemplated that the defendant pay money to any outside interest or advocacy groups either in addition to or in lieu of a civil penalty payable to the United States? If so, please provide the case names, the names of the outside groups, and

the amounts paid to each group, and the amount by which any civil penalty was offset by such penalty.

RESPONSE: The HSBC case did not involve the payment of money to any outside interest or advocacy groups. I am aware of two matters in EDNY that did, as described below.

The EDNY, together with another district, investigated claims against Citigroup concerning its securitization of mortgage backed securities. This investigation resulted in a \$7 billion settlement announced in July of 2014. In addition to payment of \$4 billion, which was at the time a record civil penalty, and payment of \$500 million to the Federal Deposit Insurance Corporation (FDIC) and five states, Citigroup agreed to provide \$2.5 billion in consumer relief. Of the \$2.5 billion in consumer relief, Citigroup agreed to make a minimum of \$10 million in payments to any housing counseling agency on a pre-existing list of certified organizations created by the Department of Housing and Urban Development (HUD).

In August of 2014, the Department announced a \$16.65 billion global settlement with Bank of America that resolved investigations and claims made against the bank by five United States Attorney's Offices, the FDIC, the Securities and Exchange Commission (SEC) and six states. The settlement required Bank of America to make monetary payments totaling \$9.65 billion, including \$800 million in connection with an investigation by the EDNY into the bank's origination of loans insured by the Federal Housing Administration. In addition to the \$9.65 billion in monetary payments, Bank of America agreed to provide \$7 billion in consumer relief. Of that amount, the bank agreed to make a minimum of \$20 million in payments to any housing counseling agency on the noted HUD list of certified organizations.

The settlements with Citigroup and Bank of America also provided for the appointment of monitors to evaluate the defendants' compliance with their obligations. According to the monitors' reports issued to date, neither Citigroup nor Bank of America has made donations to housing counseling agencies pursuant to the respective settlements.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015**

QUESTIONS 19-41 FROM CHAIRMAN GRASSLEY

NOTE: Ms. Lynch submitted responses to Questions 1-18 on February 18, 2015.

19. Follow-up to Question 4: In response to my question whether you would continue to reward grant funding to sanctuary communities, you responded that you would need to balance the punishment of a community for not cooperating with the federal government with the purpose for which the grant is being rewarded. What do you mean by this statement? Please explain.

RESPONSE: As I understand it, the purpose of Department of Justice grant programs is to provide criminal justice funding to state, local and tribal governments to reduce crime, address significant gaps in local funding, and respond to emerging criminal justice issues. Withholding grant funding can have a significant impact on important criminal justice programs at the local level. It is also worth noting that many Department of Justice grant funds are formula-based, with the eligibility criteria (and related penalties, if any) set firmly by statute. Accordingly, the Department must carefully consider whether suspending funding, when it has discretion to do so, would be in the best interest of public safety and national security. The Department's preference, wherever possible, is to work with states and localities to find out why they are not complying with a particular federal law or policy and work together to find solutions that can be supported by all. Penalties should be imposed by the federal government only as a last resort.

20. Follow-up to Question 2: I asked you whether you would continue the Department's policy of filing complaints against States for passing pro-enforcement immigration laws. You answered that you would "continue the Department's efforts to work closely with . . . state and local law enforcement partners to ensure the national security and public safety are our top priorities." The problem is the Department's policy is the exact opposite. The Department has not made efforts to work with state or local law enforcement or jurisdictions, but on the contrary, it has punished states for passing pro-enforcement immigration laws, and rewarded states and communities for not cooperating with ICE. So, given your previous answer, it appears you support the department's lack of effort in working with local law enforcement and communities. Or, will you discontinue the practice of suing states who pass pro-enforcement immigration laws?

RESPONSE: Each individual situation would have to be reviewed on a case-by-case basis. If confirmed as Attorney General, I would continue to support the federal government's primary role in developing immigration policy. I would attempt, however, to support negotiations with states and localities in the first instance, rather than litigation, if it appears that a conflict may emerge.

21. **Follow-up to Question 3(a):** You did not answer my questions regarding sanctuary communities. I asked for your view on whether sanctuary communities that release criminal aliens back into the streets, rather than holding them until ICE can take custody of them, are a threat to national security and public safety. Your response was a general support of Department policy, not an answer to that question. In your view, is the release of criminal aliens by sanctuary communities a threat to national security and public safety?

RESPONSE: I believe that all efforts should be undertaken to support state and local law enforcement authorities to notify Immigration and Customs Enforcement (ICE) of pending releases of criminal aliens during the time that these individuals are otherwise in custody under state or local authority so that the individuals can be taken into ICE custody for removal. I believe this is a valid and important law enforcement objective to protect public safety.

22. **Follow-up to Question 5:** I want to know *your* opinion, not ICE's position, on whether aliens convicted of heinous crimes should be released outside a court order. Please provide me your opinion as to whether criminal aliens convicted of heinous crimes, such as homicide, sexual assault, abduction, and aggravated assault should be released for any reason besides a court order.

RESPONSE: As I noted in response to Question 5, ICE administers the immigration detention system and is responsible for determining whether to release particular aliens from its custody. It is my view as a prosecutor, however, that any custodial decisions must be made within the confines of the law, determined on a case-by-case basis, and account for any risks to public safety.

23. **Follow-up to Question 7:** I understand that you were not part of the decision making process on whether to appeal *Martinez*. I was not asking you why it was not appealed. I want to know, in your opinion, should *Martinez* have been appealed?

RESPONSE: As I stated in my previous response, many factors go into the decision whether to seek review of a court of appeals decision, and I was not involved in the decision making process in this case. Going forward, I can assure you that, if I am confirmed as Attorney General, national security and public safety will be the basis for making decisions on how to handle these types of cases.

24. **Follow-up to Question 8(a):** I understand you were not part of implementing the 287(g) program. Again, my questions are aimed at understanding you, and your thoughts and position on these programs. Please tell me whether you personally support the 287(g) program and similar programs that authorize the federal government to delegate limited authority to state and locals who wish to participate in enforcing federal law.

RESPONSE: I believe that cooperation between federal, state, and local law enforcement agencies is essential to secure our borders and protect our national security. If confirmed, I will evaluate and support those programs that most effectively serve these critically important goals.

25. **Follow-up to Question 8(b):** Do you personally believe that the 287(g) programs should be made available to state and local law enforcement agencies that want to protect their communities and cooperate with the federal government with regard to immigration enforcement?

RESPONSE: Please see the answer to Question 24 above.

26. **Follow-up to Question 9:** Please answer the following questions regarding Justice AmeriCorps and 8 USC §1362:

- a. Do you agree that § 1362 is clear: the government may not provide a lawyer to immigrants in a removal proceeding at the expense of the taxpayers?
- b. Do you agree that Justice AmeriCorps by its very nature has due process and equal protection issues?
- c. How can the administration avoid due process and equal protection issues if it provides lawyers to some immigrants in removal proceedings, but not to others?
- d. Couldn't such a policy lead to the requirement of providing a lawyer to all immigrants in removal proceedings?

RESPONSE: Although I was not involved in the development or implementation of this program, I understand that it is designed to provide funding for legal representation to certain unaccompanied alien children in immigration proceedings in order to increase the efficient and effective adjudication of those proceedings.

I do not read 8 U.S.C. § 1362, which provides that an alien's right to counsel in immigration proceedings does not include a right of representation at the government's expense, to bar the government from exercising its discretion to fund legal representation in certain of those proceedings.

I do not see any due process or equal protection issues with the program, as I understand that aliens in removal proceedings have only the right to a full and fair hearing—a guarantee that does not require the appointment of taxpayer-funded counsel in those proceedings.

27. Follow-up to Question 12: In response to my question on whether you support the catch-and-release actions of the administration, you responded that you would enforce the immigration laws “understanding the limited prosecutorial resources are best used to focus on the removal of criminals and those who pose a threat to safety of our nation.” Does this mean that you do support the catch-and-release actions of the administration? Please explain.

RESPONSE: I support the principles that limited prosecutorial resources are best used to focus on the removal of criminals and those who pose a threat to the safety and security of our nation, and that custodial decisions must be made within the confines of the law, determined on a case-by-case basis, and account for any risks to public safety or national security.

28. Follow-up to Question 43:

43(a): In your response you mentioned that the doctrine of Executive Privilege is constitutionally-based. It is well established that the *presidential communications* privileged is constitutionally based. It is equally well established that *deliberative process* materials may be privileged in limited circumstances, but that this privilege is one of judge-made common law.¹ The Department, however, has attempted to conflate the two, and withheld documents from this committee based on an overbroad notion of “executive privilege” that includes both presidential communications and deliberative materials, created by low-level department employees, that are both *post-decisional* and *purely factual*. Please answer this straight forward question: do you believe that the *constitution* shields these deliberative materials from a congressional subpoena?

RESPONSE: It is my understanding that constitutional principles support the application of Executive Privilege over these materials. That position has been explained more fully in the briefs filed by the Department on this subject in ongoing litigation. I would refer you to those briefs for additional information about the position taken by the Executive Branch.

43(b): In your response you stated that, in your understanding, the scope of the privilege is the subject of ongoing litigation, and that the Department of Justice has taken the position that Executive Privilege is necessary to protect the President’s broad Article II functions, a position accepted by the district court. The district court did *not* accept the position the Department took in the Fast and Furious litigation that 64,000 documents were categorically shielded from a congressional subpoena because of “executive privilege,” due to separation of powers or otherwise. Rather, the court outlined the requirements for establishing a *deliberative process* privilege, noted that it was

¹ *In re sealed case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

“*qualified*,” and stressed that the showing of need for those materials is subject to “a *lower threshold*.”² Moreover, the Attorney General stated that the Department had withheld materials that were *not privileged*.³ With that in mind, what authority does the Department have to withhold documents in response to a congressional subpoena that are *not privileged*, and from where does that authority derive?

RESPONSE: My understanding is that the Department and the Executive Branch have complied with the district court’s order and, as a result, have turned over more than ten thousand documents, either in full or in part. The litigation continues over several remaining issues.

43(c): Your response simply states an aspiration to avoid subpoenas. While I share your hope that improved DOJ cooperation with Congressional requests would eliminate the need for subpoenas, please provide an answer that is responsive to the question. Congressional subpoenas are a tool used by this committee and others in exercise of this branch’s oversight responsibilities, and your position on the scope of privilege with respect to congressional subpoenas is of key interest to me and to this committee. Moreover, given that your predecessor was held in contempt of Congress for failure to comply with a subpoena, and that the Department is still in litigation with the House of Representatives over that subpoena, it seems reasonable to expect you would have given some thought to the questions at issue in that litigation. Accordingly, with respect to the deliberative process privilege, do you believe that a congressional subpoena is entitled to more weight than a Freedom of Information Act request?

RESPONSE: I believe that different considerations would apply to a subpoena from a Committee of Congress to the Executive Branch, as significant constitutional issues, including the separation of powers, are at play. I would refer you to the Department’s brief on these issues in the ongoing litigation for more information.

43(d): In working to accommodate Congress’s legislative and oversight interests, are you willing to provide deliberative, pre-decisional documents as your predecessor did when he produced drafts of the February 4, 2011 letter to me and emails about the drafting of that letter?

RESPONSE: I would be sincerely interested in working with Congress to accommodate its legitimate oversight interests on any matter.

43(e): In working to accommodate Congress’s legislative and oversight interests, would you argue (as your predecessor did) for withholding an entire category of documents

² Order at 3, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013) (emphasis added).

³ Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

based on a general assertion of “executive privilege” even when individual documents within that category—according to precedent and the admission of the Department itself—are *not in fact privileged*?

RESPONSE: It would be my hope that I would not need to request an assertion of Executive Privilege on any category of documents or, indeed, any individual document if I am confirmed as Attorney General. I would prefer, instead, to negotiate with Congress in order to accommodate its interests.

43(f): In your response you stated that in some instances, it becomes necessary for the President to assert Executive Privilege in order to preserve the separation of powers. Do you believe it is necessary for the President to assert executive privilege in order to preserve the separation of powers over non-deliberative or purely factual agency documents unrelated to communications with the White House?

RESPONSE: It is my understanding that these issues are among the issues being considered in the ongoing litigation. I would refer you to the Department’s briefs for additional information.

43(g): As the Department itself has admitted, it asserted privilege over materials it does not deem to be protected under the traditional common law deliberative process doctrine. You state that you believe that “executive privilege,” broadly, is “constitutionally based.” Please explain how the constitution could protect agency documents that do not meet the qualifications for a common law deliberative process privilege.

RESPONSE: That issue has been briefed extensively in ongoing litigation between the Executive Branch and the House Committee on Oversight and Government Reform. I would refer you to the Department’s briefs on this issue for additional information.

29. **Follow-up to Question 44:** I appreciate your willingness to work with Congress to accommodate our “legitimate oversight interests.” However, as I stated in my initial set of questions, the experience in the Fast and Furious controversy seems to suggest that the congressional authority to pursue civil litigation is not sufficient to enforce its congressional subpoenas in a timely way, and that the Department’s policy and actions pursuant to 2 U.S.C. § 194 undermine congressional oversight activities and responsibilities. Given that you are familiar enough with the issues to cite the 1984 OLC opinion, please provide specific answers to the specific questions that I posed on the issue of contempt. Additionally, do you disagree that the experience in the Fast and Furious litigation demonstrates the insufficiency of the criminal and civil contempt procedures to vindicate congressional interests in a timely way? If so, please explain why, given that the litigation is still ongoing three years later.

RESPONSE: As I stated in my earlier response, I have not had occasion as the United States Attorney for the Eastern District of New York to acquaint myself with this dispute in depth. If I

am confirmed as Attorney General, I look forward to learning more concerning the Department's position with respect to 2 U.S.C. § 194. As I also stated before, I am committed to working with Congress to accommodate its legitimate oversight interests.

30. Follow-up to Question 47(b): Your response did not unequivocally condemn the use of DOJ and White House coordinated "leaks" against a Committee Chairman conducting oversight as an inappropriate use of the Department's Office of Public Affairs. While you may not have been previously familiar with the incident described in my question, the emails referenced are publicly available and have been written about in the press. Without regard to that incident, however, do you reject as improper any use of Justice Department resources or personnel to target Senators or Members of Congress with "leaks"? If no, please explain why not?

RESPONSE: Having reviewed the web article in the footnote of your original question to gain context, I am not certain that I understand the question's reference to leaks. If confirmed as Attorney General, I would not condone efforts to target Senators or Members of Congress in any form, leaked or otherwise. As I previously stated, I believe the Office of Public Affairs must interact with all journalists courteously and professionally at all times, and should focus on communicating information related to the Department's core law enforcement responsibilities and legal casework.

31. Follow-up to Question 49:

49(a): The DOJ OIG report regarding its investigation of Ms. Attkisson's complaint determined that it was unable to substantiate Ms. Attkisson's allegations with respect to her *personal* computer, but not with respect to her *work* computer.⁴ Moreover, CBS News has issued a public statement that Ms. Attkisson's work computer was compromised.⁵ The cyber-attacks on Sony and other U.S. companies have prompted the administration to launch a brand new agency.⁶ It would seem that the hack of a major news outlet would warrant similar concern. Moreover, the OIG has neither the resources nor the jurisdiction to investigate a hack of unknown origin into CBS News systems. In light of this information, do you believe the FBI has any responsibility to investigate and determine whether Ms. Attkisson's CBS computers were hacked and by whom? If not, please explain why not.

RESPONSE: As I stated before, I share your concerns about cybersecurity and the need to be vigilant against computer hacking. In this case, I understand that the Department's Office of Inspector General conducted an investigation into Ms. Attkisson's allegations, and concluded that it could not substantiate the allegations that her computers were subject to remote intrusion by the FBI, any other government personnel, or otherwise. According to the Inspector General's

⁴ T. Becket Adams, Sharyl Attkisson: What was left out of reports on hacking, Washington Examiner (Feb. 3, 2015).

⁵ See E. Wemple, CBS News confirms multiple breaches of Sharyl Attkisson's computer, Washington Post Blog (June 14 2013).

⁶ Obama administration announces new cybersecurity agency, Fox News (Feb. 10, 2015).

report, that investigation did not cover Ms. Attkisson's work computers because CBS News declined to allow the Inspector General's investigators to forensically examine the CBS News computers that Ms. Attkisson used during her employment. It is my understanding that the Department has stated that it did not perform a broader investigation of this matter when the allegations were initially publicized because neither CBS News nor Ms. Attkisson followed up with the Bureau for assistance with these alleged incidents.

49(b): In your response you mentioned that it is your understanding that the Department's Office of Inspector General has conducted an independent investigation of this matter. Yet, given that the OIG's investigation could not include any examination of CBS computers, what steps will you take to ensure that there is a more complete and thorough investigation of the CBS hack while ensuring independent oversight in the event that evidence is uncovered of any potential government agency or contractor involvement?

RESPONSE: According to the Inspector General's report, that investigation did not cover Ms. Attkisson's work computers because CBS News declined to allow the Inspector General's investigators to forensically examine the CBS News computers that Ms. Attkisson used during her employment. If CBS News were to request the FBI's assistance with this matter, I would, if confirmed as Attorney General, ensure that the FBI appropriately considers any new evidence brought to its attention.

49(c): In light of the fact that the DOJ OIG was not able to fully investigate the CBS hack, please provide a specific response to my question in subsection c.

RESPONSE: Throughout my tenure as a career prosecutor and as a United States Attorney, I have gained a great respect for the career law enforcement agents at the FBI who work tirelessly to hold accountable those who violate our federal laws. I have complete confidence that these career law enforcement agents will fully consider any credible evidence of criminal misconduct, without any regard for the topic of litigation matters being handled by other components of the Department.

32. **Follow-up to Question 52(a):** In your response to my question about whether you would report your travel on FBI jets as required under OMB Circular A-126, you responded with "As the United States Attorney for the Eastern District of New York, I have not had the occasion to study this issue and am not familiar with the specific reporting requirement for the official travel on government aircraft." Regardless of your familiarity with the reporting requirement (footnoted below)⁷, do you pledge—in the

⁷ OMB Circular No. A-126, *Improving the Management and Use of Government Aircraft* (May 22, 1992). Agencies that use government aircraft shall report semi-annually to GSA each use of such aircraft for non-mission travel by senior Federal officials, members of the families of such officials, and any non-Federal travelers. Such reports shall be in a format specified by GSA and shall list all such travel conducted during the preceding six month period. The report shall include: (i) the name of each such traveler, (ii) the official purpose of the trip, (iii) destination(s)...

spirit of transparency—to report your non-mission travel to the General Service Administration semiannually? If not, please explain why not.

RESPONSE: It is my understanding that the Department manages Attorneys General travel in full compliance with OMB Circular A-126. Further, the Department has a well-established practice of releasing Attorneys General travel records upon request, including travel on government aircraft. If confirmed as Attorney General, I commit to doing the same. Further, if GSA clarifies its Property Management Regulations pertaining to unclassified travel on government aircraft, I understand the Department has no objections to reporting its data to GSA.

33. Follow-up to Question 53:

53(a-c): In your response, you noted that “administrative leave is appropriate in some circumstances.” Please describe the circumstances in which you believe administrative leave is appropriate.

RESPONSE: As noted in my initial response, in my experience as the United States Attorney for the Eastern District of New York, I am aware that the applicable regulation provides that administrative leave may be appropriate where there are allegations of misconduct or performance issues likely to lead to formal adverse actions against an employee. If the underlying allegations involve potentially criminal conduct and may present a risk to the safety of staff and/or the public, administrative leave during the investigative and personnel process may be necessary to keep the employee away from the workplace pending the investigation and potential administrative action. It is also my understanding that the Department’s policies and procedures governing the justification, review and approval process for paid administrative leave, including leave beyond 10 days, provide safeguards against abuse and ensure reasonable and responsible use of Department resources.

53(b): Given that the Department had 1,849 plus employees on administrative leave for more than 30 days from fiscal years 2011-2013—in spite of policy that limits it to 10 working days⁸—do you believe it should be used less frequently? If not, please explain why not. Will you pledge to review the use of administrative leave at the Department and work to ensure that exceptions to the Department’s 10-day limit are granted less frequently than they currently are? If not, please explain why not.

RESPONSE: If confirmed as Attorney General, I commit to reviewing the cited October 2014 Government Accountability Office (GAO) report and examining the implementation of the Department’s existing policies and procedures on administrative leave to ensure that they are being administered appropriately.

34. Follow-up to Question 54(b): Your response to this and several other questions about the Inspector General’s right of access to Department records indicated your willingness

⁸ GAO, *Use of Paid Administrative Leave*, GAO-15-79 (Washington, D.C.: October 2014).

to provide documents “necessary for him to complete his reviews.” However, the law gives him access to all records of the Department without regard to any determination by the Attorney General about whether they are necessary for him to complete his reviews. When you say you are committed to providing the Inspector General everything necessary to complete his reviews, do you mean everything that is necessary in your judgment or everything that is necessary in the Inspector General’s independent judgment?

RESPONSE: I believe the Inspector General should receive all documents and information he believes are necessary for him to complete his reviews, consistent with the Inspector General Act.

35. **Follow-up to Question 55(g):** As justification for excluding attorney misconduct from the OIG’s jurisdiction, you cite the historical expertise of OPR in dealing with attorney misconduct allegations. However, the examples I cited in the other subparts of Question 55 illustrate that the lack of transparency, lack of statutory independence, and lack of consistency can lead to a diminished public trust in OPR’s ability to impose accountability. If confirmed, will you pledge to personally review the cases I cited that give rise to this concern? If not, please explain why not.

RESPONSE: If confirmed, I commit to you that I will be briefed on the matters you have cited.

36. **Follow-up to Question 75(c):** It is your understanding that the Department continues to monitor qui tam cases and may, in appropriate circumstances, further investigate, seek to intervene for good cause, and/or attempt to negotiate a settlement. Are there any circumstances in which it would be appropriate for the Justice Department to negotiate settlement of a non-intervened FCA case without qui tam counsel’s involvement? Did the Eastern District of New York, under your leadership, ever pursue settlement negotiations in a qui tam case, and did you consult with qui tam counsel?

RESPONSE: The Eastern District of New York consults and coordinates with relator counsel throughout the course of its investigation of qui tam claims. This includes settlement, where we seek a consensus position with relators on material terms, including the amount of settlement and relator share.

More broadly, it is my understanding that in the great majority of cases in which the United States declines to intervene and the relator pursues the litigation, the United States and the relator will work together to achieve an appropriate resolution. However, it remains the responsibility of attorneys for the Department of Justice to ensure that the best interests of the taxpayers are represented in all FCA matters, including those in which the United States has declined to intervene. Accordingly, in rare circumstances, where the facts and/or law warrant it, it is my understanding that the Department of Justice may pursue a settlement with a defendant in a declined case for either more or less than the amount sought by the relator. However, pursuant

to the statute, 31 U.S.C. § 3730(c)(2)(B), the relator may object to a proposed settlement and obtain a hearing on his or her objection.

37. **Follow-up to Question 78(a-f):** Please answer subparts (b), (c), and (e), which were not addressed in your response. Regarding subpart (d), you indicated that sometimes the USAO with a nexus to the matter is recused and another USAO investigates instead. Was another USAO recused from investigating in this instance? Was it the District of Arizona? If so, why was this matter not transferred to the Southern District of California, as the other Fast and Furious-related matters were, in light of the conflicts in the District of Arizona? Please describe in detail the process by which the matter came to your office and any communications you may have had about whether your office was appropriate one to take on the responsibility and why.

RESPONSE: Regarding subparts (b), (c), and (e), as I noted in my previous answer, the Department does not disclose information about investigations that do not result in charges because doing so would not be fair to those who may have been investigated. With respect to your questions above, the matter was brought to my office by the Department's Inspector General who, in coordination with the Office of the Deputy Attorney General, requested that the EDNY take the case, from which another United States Attorney's Office had been recused. My recollection is that we were not provided information as to which Office had been recused from the specific matter.

38. **Follow-up to Question 79(b-c):** Your response failed to address subparts (b) and (c). Please answer those specific questions about what steps you would take if confirmed to determine the extent to which ATF is photocopying or photographing form 4473s *en masse* during annual inspections and whether such a practice is appropriate or should be sanctioned by the Department.

RESPONSE: With respect to subparts (b) and (c), if confirmed, I would review ATF's handling of forms 4473 during annual inspections to ensure that current practice is appropriate.

39. **Follow-up to Question 15:** I asked you a question concerning Justice Breyer's dissenting opinion in *McCutcheon v. FEC*, in which he wrote that "the First Amendment advances not only the individual's right to engage in political speech, but also the public's interest in preserving a democratic order in which collective speech *matters*" (emphasis in original). You stated that you "ha[d] not had the opportunity to delve into the academic debate about whether certain constitutional rights are individual or collective." You also stated in response to what other rights were collective that "[t]here undoubtedly are certain rights that are fundamental to our democracy that can only be meaningfully exercised with other people, such as the right to assemble and other associational rights."
- a. Is there any actual "academic debate about whether certain constitutional rights are individual or collective"? Do you believe there is any serious debate to be had on this

subject? Has any Supreme Court decision ever found any right in the Bill of Rights to be collective?

RESPONSE: It is not clear to me that the abstract categorization of “individual” versus “collective” rights would be particularly useful in analyzing how our constitutionally guaranteed rights apply in any concrete circumstance. Instead, if I am confirmed as Attorney General, I would be guided and bound by existing Supreme Court precedent. I am not aware of any existing Supreme Court precedent that characterizes a right under the Constitution as “collective.”

- b. Regardless of whether you ever considered the question as United States Attorney, does the First Amendment protect “collective” rights?

RESPONSE: It is not clear to me that the abstract categorization of “individual” versus “collective” rights would be particularly useful in analyzing how our constitutionally guaranteed rights apply in any concrete circumstance. I do believe that there are some constitutional rights, including those enshrined in the First Amendment, that are sometimes most meaningful when exercised in connection with other people. These would include, by way of example only, the right to peacefully assemble.

- c. If so, what other collective rights does the Bill of Rights protect?

RESPONSE: Please see the answer to Question 39(b) above.

40. **Follow-up to Question 19:** When I asked for your view of the constitutional duty of the Executive “to take Care that the Laws be faithfully executed” as contained in Article II, sec. 3 of the U.S. Constitution, you replied, “The President has the constitutional obligation to take care that the Constitution and laws of the United States are faithfully executed by the Executive Branch.” Respectfully, I asked for your view of the constitutional text, not its repetition. Please provide a detailed answer that reflects your view of the Executive’s obligations under the Take Care Clause.

RESPONSE: Under our system of separated powers, it is the President’s obligation to take care that the laws are faithfully executed, and he cannot abdicate his responsibility to enforce duly-enacted laws. Nor can he, consistent with the Constitution and its allocation of powers between the branches, attempt to, in effect, legislate or to rewrite laws under the pretense of exercising his enforcement discretion.

41. Will you appeal the federal district court's ruling in *Mance v. Holder*, which held unconstitutional a federal ban on the direct sale of handguns for Federally Licensed Dealers to out of state residents?

RESPONSE: It is my understanding that the district court's decision in *Mance v. Holder* was issued on February 11, 2015, and the Department has 60 days from the date of decision in which to decide whether to appeal. Consistent with the usual practice in the event of an adverse district court decision, the Solicitor General is overseeing a process to determine whether appeal would be appropriate. I understand that that process includes soliciting recommendations from the affected components of the Executive Branch and the relevant components of the Department of Justice, and that no final decision on appeal has been made as of this time.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR HATCH

1. On April 25, 2013, Professor Paul Cassell of the University of Utah College of Law testified before the House Judiciary Subcommittee on the Constitution regarding implementation of crime victims' rights statutes. These include the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, and the Crime Victims Rights Act, 18 U.S.C. §3771, both of which I helped to enact. He suggested that your office had failed to follow these statutes in a sealed case involving a racketeering defendant who had cooperated with the government. Specifically, he cited documents appearing to show that your office failed to notify victims of the sentencing in that case and had arranged for the racketeer to keep the money he had stolen from victims, even though the law makes restitution mandatory. Please explain in detail how your office protected the rights of crime victims in this case and, in particular, how it complied with the mandatory restitution provisions of these two statutes.

RESPONSE: The defendant in question, Felix Sater, provided valuable and sensitive information to the government during the course of his cooperation, which began in or about December 1998. For more than 10 years, he worked with prosecutors from my Office, the United States Attorney's Office for the Southern District of New York and law enforcement agents from the Federal Bureau of Investigation and other law enforcement agencies, providing information crucial to national security and the conviction of over 20 individuals, including those responsible for committing massive financial fraud and members of La Cosa Nostra. For that reason, his case was initially sealed.

During my most recent tenure as the United States Attorney for the Eastern District of New York, the Office's only activity related to this matter was to address whether certain materials should remain sealed. My Office's position has consistently been upheld by the courts.

The initial sealing of the records related to Sater—which pre-dated my tenure as United States Attorney—occurred by virtue of a cooperation agreement under which Sater pled guilty and agreed to serve as a government witness. In 2013, following proceedings before United States District Judge I. Leo Glasser of the Eastern District of New York, roughly three-fourths of the materials in this case were unsealed. At this point, the majority of the materials that remain sealed go to the heart of the nature of Sater's cooperation in several highly sensitive matters. Judge Glasser has ruled that these remaining materials should remain sealed on the basis of, among other things, the "safety of persons or property" and the "integrity of government investigation and law enforcement interests."

In addition to Judge Glasser's 2013 ruling, a three-judge panel of the Second Circuit Court of Appeals twice rejected efforts to reconsider the decision to keep certain materials sealed in this case. The judges reviewing Judge Glasser's order concluded that "given the extent and gravity of Sater's cooperation," continued sealing of select materials was appropriate. In a separate

instance, the court went out of its way to warn the plaintiffs behind the lawsuit to cease any further “frivolous” motions or else risk court-imposed sanctions. Finally, just last month, the Supreme Court declined to hear any further arguments from the parties behind this lawsuit.

In terms of restitution, there has been speculation that my Office pursues restitution from cooperating defendants differently than it does from other defendants. It does not. With respect to Sater’s case, the information in the record that concerns the issue of restitution remains under seal. As a matter of practice, however, the prosecutors in my Office work diligently to secure all available restitution for victims, whether the defendants convicted in their cases cooperate with the government or not. In fact, since June 2010, in EDNY cases, judges have imposed nearly two billion dollars in restitution to individual and government victims.

2. For several years, then-Senator Joe Biden and I worked to insure that the Justice Department supported youth mentoring organizations. We helped groups like the Boys and Girls Clubs of America greatly expand the number of those they serve by partnering with the Office of Justice Programs, which you will oversee if appointed to be Attorney General. In recent years, the President’s budgets have proposed to reduce funding for youth mentoring grants and Congress has restored and even increased that funding. Can you assure me that, as Attorney General, you will work with OJP and others to make sure that funds are directed where they can do the most good and maximize the delivery of needed services?

RESPONSE: I know that mentoring organizations in this country, like the Boys and Girls Clubs of America, are doing amazing work with young people. The Department’s Office of Justice Programs (OJP) is invested in supporting the continued expansion of high quality mentoring for at-risk youth through the appropriated mentoring funds. OJP, through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), has worked with and continues to work with many of these mentoring organizations through the use of funding solicitations directed at National and Multi-state mentoring organizations.

If I am confirmed as Attorney General, I will support the work of OJJDP and the many mentoring organizations implementing high quality mentoring programs. I will also support the OJJDP National Mentoring Resource Center, which is a source of training and technical assistance for all mentoring programs across the country.

3. In your hearing on January 28, I urged you to enforce laws prohibiting child pornography and to help victims receive restitution. Adult obscenity also lacks First Amendment protection and harms individuals, families, and communities. It is connected to sexual exploitation and violence against women as well as to human trafficking and is a destructive force in marriages. Even though the Obscenity Prosecution Task Force has been disbanded and prosecution of adult obscenity brought back under the Child Exploitation and Obscenity Section, will you commit to aggressively enforcing the adult obscenity laws and provide current data about the cases initiated and prosecuted by the Department that involve only adult obscenity?

RESPONSE: As you note, obscenity is not protected by the First Amendment. I understand that the Department has brought significant obscenity prosecutions in recent years, and I look forward to ensuring that the Department remains committed to bringing obscenity cases where appropriate. The Department can provide current data concerning obscenity prosecutions, if helpful.

4. I understand that the Justice Department is in the process of reviewing the ASCAP and BMI consent decrees. I want you to know how interested I am in this process and how important it is to the future of songwriters. Will you commit to making meaningful revisions to the decrees as soon as possible?

RESPONSE: I understand that the Antitrust Division is currently reviewing the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) decrees in order to determine whether the decrees' terms continue to be appropriate given advances in markets and technology in music distribution and promotion. The Antitrust Division solicited public comments on a number of questions concerning these decrees. *See* <http://www.justice.gov/atr/cases/ascap-bmi-decree-review.html>. I believe the Department is working as expeditiously as possible to complete the review in a timely fashion and understand that it will pursue any appropriate modifications so that music publishers and licensees benefit from competitive markets, taking into account new media technologies.

5. It has been reported that the Justice Department systematically targets lawful businesses by pressuring financial and banking services providers to stop doing business with firearm and ammunition companies and others dubbed "high risk." Do you believe that this type of targeting is appropriate and will you continue his practice if appointed to be Attorney General?

RESPONSE: The role of the Department of Justice is to enforce the law and as a career prosecutor and the United States Attorney for the Eastern District of New York, I can assure you that I, and my fellow prosecutors and law enforcement partners, take this role seriously. Our job is to investigate specific evidence of unlawful conduct and enforce the law. Our cases should target businesses that are violating the law, not those acting lawfully.

The Department works every day to uphold the law and protect the American people. To ensure that our efforts are effective, the Department also must make sure to prevent any potential misunderstanding of its efforts that could be detrimental to lawful businesses. Thus, if I am confirmed as Attorney General, I will make clear that it is imperative that we inform financial institutions that any investigations are based on specific evidence that a financial institution is breaking the law, and not on the institution's relationships with lawful industries or companies.

6. Several years ago, the ATF was removed from the Treasury Department and became a stand-alone agency and the Department of Homeland Security was created. The ATF and

DHS often work together and share many of the same tasks. Do you believe the ATF should remain a separate agency or should it be merged with DHS?

RESPONSE: Although as the United States Attorney for the Eastern District of New York I have not studied various proposals for re-organizing components of the Department of Justice, I support ATF and believe its law enforcement capabilities must be preserved. ATF is a unique law enforcement agency in the Department of Justice that protects our communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products. ATF partners with communities, industries, law enforcement, and public safety agencies to safeguard the public through information sharing, training, research and use of technology.

7. I disagree with the Justice Department's decision not to enforce federal marijuana laws in states that have legalized marijuana. It sends the wrong message to our youth and demonstrates disregard for the rule of law. We should all agree, however, about the need to continue fighting drug trafficking organizations and the dangers they cause. In my state of Utah and other western states, drug trafficking organizations divert rivers and streams, clear cut timber, pollute the environment, and even place booby traps in the course of illegally growing marijuana on public lands. I recently introduced legislation with Sen. Feinstein to address these problems, S.348, the Protecting Lands Against Narcotics Trafficking Act. It enhances penalties for growers who degrade the environment and create public safety hazards and creates a fund to remediate environmental harms cause by illegal marijuana cultivation. Will you commit to making the prevention of marijuana growth on federal land a priority and to ensuring that prosecutors use the tools that my bill provides?

RESPONSE: As indicated in the Deputy Attorney General's Memorandum, dated August 29, 2013, combating large-scale marijuana grows, including those on public lands, is a priority for the Department. The geographic isolation of the marijuana grows and the size of federal public lands requires a coordinated and multi-agency effort. I understand that some of my fellow United States Attorneys, particularly those in the western part of the United States, are working closely with DEA, the National Forest Service, the Bureau of Land Management (BLM), and other federal, state, and local partners to enforce the controlled substance laws against drug traffickers who threaten public safety and the environment by using federal public lands for large-scale marijuana cultivations.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Question for the Record
Submitted February 9, 2015**

QUESTION FROM RANKING MEMBER LEAHY

1. In 2008, following thorough congressional hearings, agency consultations, and stakeholder outreach, Congress passed and President George W. Bush signed Public Law 110-344, the Emmett Till Unsolved Civil Rights Crime Act, into law. Throughout its evolution, Pub. L. 110-344 enjoyed broad, bipartisan, bicameral support; the bill passed the U.S. House of Representatives by a vote of 422-2 and was unanimously adopted in the Senate. I was an original cosponsor on the Senate side along with several other senators, while Congressman John Lewis was the lead cosponsor on the House side.

The Emmett Till Unsolved Civil Rights Crime Act established an intensive, 10-year collaborative effort to codify the Department of Justice's Cold Case Initiative. It authorized the designation of a Deputy Chief of the Criminal Section of the Civil Rights Division and a Supervisory Special Agent in the Civil Rights Unit of the Federal Bureau of Investigation to coordinate and lead intensive investigations of open, civil rights cases. These designees would work with the Department of Justice's Community Relations Service and State and local law enforcement officials to thoroughly investigate unsolved civil rights murders and bring closure and justice to the victims' families, friends, loved ones, and communities.

Will you review the Department's implementation of the bill and work with the bill's sponsors and the Members of this Committee to ensure that the goals of this important law are fully realized?

RESPONSE: Racially motivated murders from the civil rights era constitute some of the greatest blemishes upon our nation's history. I assure you that I fully support the goals of the Emmett Till Unsolved Civil Rights Crime Act of 2007. If confirmed, I will review the Department's implementation of the bill and I look forward to working with the bill's sponsors and the Members of this Committee to achieve the goals of this important law to the greatest extent possible.

My understanding is that the Department has committed considerable efforts to the cold case initiative. FBI agents and attorneys from the Civil Rights Division have traveled to FBI field offices to conduct on-site reviews of cases and to formulate specific investigative plans. Civil Rights Division attorneys have worked alongside FBI agents in conducting interviews of witnesses and combing through available evidence. The FBI has offered rewards for information regarding these crimes. Department officials also have reached out to the community, including groups such as the NAACP, Southern Poverty Law Center, the Cold Case Truth and Justice Project, and others, to enlist their assistance in identifying potential cases and uncovering information that may lead to prosecutions. And considerable resources have been devoted to investigating specific cases.

I understand that the Department has in some cases been successful in bringing cold case prosecutions. But in many cases, the Department cannot bring a prosecution because all subjects are deceased, or subsequent unrelated events have caused evidence to be destroyed, or the passage of time has weakened memories.

Success in this initiative will not be measured in prosecutions alone, but rather in our ability to uncover the truth where possible. For those cases where, for a variety of reasons, a prosecution is not possible, it is important to work to provide closure to affected families and communities. Closure for families, as well as an assurance to the American people that each of these matters has received a full, thorough and independent review, was a significant part of the goal of the Emmett Till Act, and to which, if I am confirmed, I am fully committed.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR LEE

1. As the Nation's chief legal officer, the Attorney General is responsible for giving the President and other government agencies candid advice about the legality of proposed Executive action. With that in mind, please answer the following:
 - a. If confirmed, you (or the Office of the Legal Counsel under your supervision) would be asked to definitively opine on the legality of a variety of proposed Executive actions. As an experienced lawyer, you know that often both sides of a legal dispute can muster reasonable arguments in their defense. And yet one side's arguments, however reasonable, are nevertheless wrong—or at least weaker than those opposed to them. In your view, is it the duty of the Department of Justice to give a favorable opinion of the legality of proposed action so long as reasonable arguments can be made in its defense? Or must the Department decide, *de novo*, whether those arguments are in fact correct?
 - b. At your hearing, you testified repeatedly that you had reviewed the OLC memo concerning the legality of the President's executive action on immigration, and found its arguments "reasonable." Do you agree that, if confirmed, you must independently determine whether those arguments are not just "reasonable" but in fact correct?

RESPONSE: If I am confirmed as Attorney General, as I testified at my confirmation hearing, the Constitution and the laws of the United States will be my guide as I exercise my powers and responsibilities as Attorney General, and I will fulfill those responsibilities with integrity and independence. As United States Attorney, I have not yet had occasion to have extensive interaction with the Office of Legal Counsel (OLC). As your question suggests, OLC is charged with advising whether proposed executive actions are lawful. OLC is not an advocate charged with defending executive actions in litigation, and it is not OLC's mission to devise any possible argument to defend such action, or to advance all arguments that would be available to support such action in court. Rather, if I am confirmed as Attorney General, I would expect OLC to provide candid, independent, and principled advice, especially where that advice is inconsistent with the aims of policymakers. OLC's value to the President and Executive Branch turns on the strength of its analysis, and so I believe OLC's advice should be clear, accurate, thoroughly researched, and soundly reasoned. Because, in providing its advice, OLC is exercising the delegated authority of the Attorney General, I will appropriately supervise the Office in its work.

2. How would you describe your approach to statutory interpretation?
 - a. To what sources would you look in deciding a legal question that turned on interpretation of a federal statute?

RESPONSE: Consistent with Supreme Court precedent, I would approach statutory interpretation using all of the tools available to me, including the statute's text, structure, context, history, and purpose, as well as relevant case law.

- b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a lawyer be capable of adducing a statute's purpose?

RESPONSE: Supreme Court precedent demonstrates that the purpose of a statute can be discerned from a range of available tools, including the statute's text, structure, context, and history.

3. In the case of the Commerce Clause, apart from circumstances present in *Lopez* and *Morrison*, what are the limits on Congress's Commerce Clause power?

RESPONSE: I have not undertaken a systematic review of Commerce Clause jurisprudence. However, it is my understanding that the Commerce Clause grants Congress broad authority to regulate commerce among the states and activities that have a substantial effect on interstate commerce, but would not extend to legislation not necessary and proper to such regulation. The precise contours of Congress's Commerce Clause power have been (and are being) developed in the courts.

4. Do you believe that Congress has at any time overstepped its authority under the Commerce Clause since *Wickard*, other than in *Lopez* and *Morrison*?

RESPONSE: As noted above, I have not undertaken a systematic review of Commerce Clause jurisprudence in connection with this question, but I am not aware of other instances since *Wickard* where the Supreme Court struck down a statute based on a conclusion that Congress had exceeded its authority under the Commerce Clause.

5. Under the Supreme Court's decision in *Bolling v. Sharpe*, the Federal Government may not constitutionally discriminate on the basis of race. With that in mind, do you believe it is consistent with the constitutional equal-protection principle for Congress to require local governments or private employers to take explicit account of the racial impact of employment policies?

RESPONSE: I believe that employers have a right to select the best candidates for a job. For forty years, the Supreme Court has recognized that employment practices that disproportionately screen out people of a particular race, national origin, or gender can deny an individual a job as effectively as directly excluding persons of a group. Congress included this established principle in the Civil Rights Act of 1991, and the Department of Justice has enforced it for decades,

through both Republican and Democratic administrations. My understanding is that the Department brings job discrimination cases based on the law, never solely on the number of persons hired from any racial group.

6. Do you believe that *Citizens United v. FEC* was correctly decided?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had occasion to reach a considered view on whether *Citizens United v. FEC* was correctly decided. I support and follow the Supreme Court's binding decisions now as the law of the land, and if confirmed, I would continue to do so as Attorney General.

7. During a State of the Union address, President Obama said the *Citizens United* decision would allow "foreign corporations to spend without limits in our elections." Do you believe that is an accurate description of the holding of that case?

RESPONSE: I am not familiar with the President's comment that you have quoted above or the context in which it was made, and I would not want to speculate on what he may have intended by it.

8. I would like to give you another opportunity to answer a question you were asked several times at your hearing about the limits of Executive power. Imagine the President decided that, because Congress had failed to act to reform the tax laws, the federal government would simply no longer collect any taxes above a 25% marginal rate. Could such an act be a constitutionally permissible exercise of prosecutorial discretion? Please include, in your answer, a yes or no.

RESPONSE: It is not clear to me that the collection of taxes is an activity subject to principles of prosecutorial discretion, and I am not familiar with whether or, if so, how the Internal Revenue Service relies on the concept of prosecutorial discretion in connection with its tax collection efforts.

9. INA § 212(d)(5)(A) limits the government's authority to parole aliens into the United States to certain limited circumstances. It provides in relevant part that parole may be granted "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." Nevertheless, USCIS's Form I-131 permits recipients of deferred action to obtain advance parole—*i.e.*, permission to leave the country and then be paroled back into the United States upon their return—for "educational purposes, employment purposes, or humanitarian purposes."¹ According to USCIS, "[e]ducational purposes include, but are not limited to, semester abroad programs or academic research" and "[e]mployment purposes include, but are not limited to, overseas assignments, interviews,

¹ See Instructions to USCIS Form I-131, OMB Doc. No. 1615-0013, at p. 4.

conferences, training, or meetings with clients.”² Do you believe that an undocumented alien’s need to attend meetings with clients abroad presents an “urgent humanitarian reason[]” or a significant benefit to the American public within the meaning of INA § 212(d)(5)(A)?

RESPONSE: As United States Attorney who is not an expert in immigration law, I am not familiar with the authority that the Secretary of Homeland Security exercises over parole decisions. However, if confirmed as Attorney General, I will support the strong enforcement of our nation’s immigration laws.

10. If an inadmissible alien approached our border, without a visa, and asked to be paroled into the United States in order to take a business meeting in New York, or attend a conference in Washington, D.C., do you agree it would be unlawful to parole the alien into the country for that purpose?

RESPONSE: As United States Attorney who is not an expert in immigration law, I am not familiar with the authority that the Secretary of Homeland Security exercises over parole decisions. However, if confirmed as Attorney General, I will support the strong enforcement of our nation’s immigration laws.

11. Will you commit to independently determining whether USCIS’s advance parole program complies with INA § 212(d)(5)(A) and release your conclusions to the Congress?

RESPONSE: If the Office of Legal Counsel is presented with this question in the course of its duties, or if the Department is tasked with defending actions by USCIS relating to advance parole, I would expect these actions to take into account the applicable statutory criteria.

12. In April 2014, DHS Secretary Jeh Johnson told the U.S. Council of Mayors that immigrants who entered this country illegally have “earned the right to be citizens.” Do you agree with that assertion?

RESPONSE: I am not familiar with the context of the Secretary’s remark. I believe that eligibility for citizenship is established by statute and implementing regulations. I would defer to Congress and those officials entrusted with citizenship determinations as to how these laws should be amended or enforced.

13. You recently announced that your office was prosecuting, for conspiracy to commit murder, foreign terrorist fighters accused of engaging in combat with U.S. troops on battlefields abroad. What criteria were used to decide whether these combatants should

² *Id.* at p. 5.

be criminally prosecuted rather than detained under the law of war and prosecuted by military commissions under the Military Commissions Act?

RESPONSE: I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In any particular case, representatives of the agencies who are tasked with protecting the American people, including the Department of Defense, the Department of Homeland Security, the Department of Justice and agencies in the Intelligence Community, work together to determine the most effective tools to apply in that case, based on the particular facts and applicable law. As the United States Attorney for the Eastern District of New York, my role to date has been limited to determining whether or not there was a prosecutable federal case, not which was the appropriate tool to employ.

Because the cases to which you refer are ongoing prosecutions, I cannot comment on the specific facts or decision-making processes in those matters, other than to indicate that the process described above was observed.

14. Do you believe foreign terrorist fighters' engaging in combat with American military forces is best described as a conspiracy to murder American nationals?

RESPONSE: As indicated above, I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In Article III prosecutions, the government can bring a range of charges against a foreign terrorist fighter, and conspiracy to murder American nationals can be one such charge, depending on the facts. If I am confirmed as Attorney General, I will pursue an 'all-tools' approach, and where an Article III prosecution was the most effective tool, will continue to support the Department's longstanding approach of bringing the most serious charges the government could sustain at trial.

15. Are you concerned that Article III criminal trials afford enemy combatants the opportunity to summon our troops from their duties elsewhere in order to appear as witnesses in criminal court?

RESPONSE: As indicated above, I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. If I am confirmed as Attorney General, I will support careful consideration of all appropriate factors in any decision about which tool to employ, including any burden on U.S. military personnel or operations. From my experience as United States Attorney leading an office that has prosecuted many of our nation's most significant terrorism cases, I know first-hand that our skilled prosecutors and law enforcement agents can obtain convictions in many cases without adversely affecting the mission of the U.S. military.

16. At your hearing, you testified that civil asset forfeiture was a “wonderful tool” for law enforcement. No doubt that can sometimes be true, when the person who owns the seized asset is in fact guilty of using the asset to commit crimes. But our current laws permit the government to seize assets without first proving that guilt. Please answer whether you believe it is fundamentally just for the government to seize a citizen’s bank account on the belief that it contains the proceeds of crime, but without having to carry a burden to prove the owner’s guilt.

RESPONSE: Assets can be seized by the government for civil forfeiture only if there is probable cause linking the particular asset to criminal activity. The probable cause requirement is a core tenet of our legal system, and there is nothing about the forfeiture process, civil or otherwise, that allows for the seizure of property in the absence of probable cause. Because civil asset forfeiture is a proceeding against property and not against an individual, it does not require an accompanying criminal conviction. Rather, to forfeit the asset, the government must ultimately prove by a preponderance of the evidence that the property at issue is linked to criminal activity. Civil forfeiture law further provides protection for any innocent owner of an asset who is unaware of its link to criminal activity.

17. I understand from news reports that in 2012 your office froze bank accounts belonging to the Hirsch brothers, but did not file a criminal or civil complaint, and ultimately agreed to return the funds only if the brothers agreed not to attempt to recover their expenses in trying to persuade you to return their money. Please explain whether you believe this case is a good example of why civil asset forfeiture is an important law enforcement tool.

RESPONSE: 31 U.S.C. § 5324 provides that “[n]o person shall, for the purpose of evading” certain statutory reporting requirements primarily set forth in 31 U.S.C. §§ 5313(a), 5325 and 5326 “cause or attempt to cause a domestic financial institution to fail to file a report” for the deposit of amounts in excess of \$10,000.00. In May 2012, my Office presented evidence to a federal magistrate judge that the Hirsch brothers’ business, Bi-County Distributors, Inc. (“Bi-County”), had deposited over \$1.4 million in cash in what the evidence indicated was likely a “structured” manner, intended to evade federal currency reporting requirements. Based upon this showing, the federal magistrate judge found that there was probable cause for the seizure of the structured deposits and issued a warrant to seize Bi-County’s account.

Frequently, structured cash deposits are designed to conceal crimes such as narcotics offenses, money laundering and tax evasion. The currency reporting requirements have been an effective tool in assisting law enforcement in its detection of such criminal conduct. In order for the forfeiture statutory scheme to achieve its purpose, it authorizes the seizure of structured funds at the outset of a case, regardless of whether the case is pursued civilly or criminally. If such seizures were not authorized, then the statutory scheme would be rendered largely ineffective as cash assets likely would be dissipated long before any court could issue an order of forfeiture.

In all cases like the Bi-County case, where bank accounts are seized, such seizures can be effectuated only after the review, approval and authorization of a United States Magistrate Judge.

Before seizure warrants even are submitted for judicial authorization, my Office carefully reviews all available information which has resulted in the declination of many civil asset forfeiture cases presented for prosecution. These judicial safeguards, in conjunction with my Office's internal vetting process, have prevented wrongful seizures in the past and will prevent them in the future. If, following a seizure, my Office is presented with or obtains information that leads to a determination that the forfeiture of the seized asset should not be pursued on the merits, then my Office has, and will continue to, consider settlement or a return of the asset, as appropriate.

18. You testified that you understood that the Attorney General had discontinued the federal government's previous program of adopting state and local seizures as its own. But the Attorney General's order to which you referred contains several exceptions, one of which is for "seizures pursuant to federal seizure warrants, obtained from federal courts to take custody of assets originally seized under state law." In your experience as a prosecutor, are you aware of any legal impediments to obtaining a federal seizure warrant, whether under Federal Rule of Criminal Procedure 41 or otherwise, for the types of property seized by state officials that were previously subject to asset-forfeiture adoption?

RESPONSE: Attorney General Holder's January 16, 2015, Order generally prohibited the practice of adoption by federal agencies of assets seized by state and local law enforcement. The use of federal seizure warrants is an altogether different practice. The obtaining of a federal seizure warrant necessitates an independent, judicial finding that the seizure is supported by evidence demonstrating probable cause that a federal crime has been committed and the asset in question is linked to that crime. Thus, where a federal prosecutor obtains a federal seizure warrant for an asset, there are enhanced safeguards that the case is federal in nature.

I have been informed that the Department's review of civil asset forfeiture is ongoing. The goal of this review, as I understand it, is to ensure that federal asset forfeiture authorities are used effectively and appropriately to take the profit out of crime and return assets to victims, while safeguarding civil liberties and the rule of law. If I am confirmed, I pledge to continue that review.

19. Dating back to the 1960's and 1970's, the Department of Justice has been concerned about organized crime and other criminal enterprises profiting from the proceeds of illegal gambling. By way of example, the American Gaming Association estimated that the Super Bowl would attract some \$3.8 billion in illegal wagers, which is 38 times the amount wagered lawfully. Please describe any actions you have taken as United States Attorney to combat illegal gambling; and please describe what can be done to better address the growing problem of illegal gambling.

RESPONSE: During my time as the United States Attorney for the Eastern District of New York, my Office has brought prosecutions for illegal gambling, including as part of larger racketeering cases. In 2011, my Office led the largest ever nationally coordinated organized crime takedown against organized crime in the United States. Twelve indictments were unsealed

in Brooklyn against eighty-five individual defendants, including charges against members of all five New York-based La Cosa Nostra families. Those charges included charges for illegal gambling, including illegal sports betting and operation of illegal card games and illegal gambling devices. As in other areas, when it comes to illegal gambling, we generally prioritize the most egregious conduct, including conduct tied to organized crime or instances where illegal gambling is part of a larger criminal scheme. I would welcome the opportunity to work with Congress to address this issue.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR PERDUE

1. As a career federal prosecutor, I know you are familiar with the concept of prosecutorial discretion. What, if any, are the limits of the President's discretion to enforce federal law?

RESPONSE: That is a question best suited for the Office of Legal Counsel, based upon the facts of a particular case. I would not want to prejudge any issue that the Department may be presented with in the future, should I be confirmed as Attorney General. There are, of course, recognized constitutional limitations on the President's authority.

2. With respect to the President's executive action on immigration, please explain the legal basis for your belief that the Office of Legal Counsel memorandum setting forth the argument for the President's action is constitutional and "reasonable."

RESPONSE: As I noted during my testimony before Committee, the opinion by the Office of Legal Counsel is based upon a thorough review of precedent, prior actions by Congress, as well as the discretionary authority of the Department of Homeland Security to prioritize the removal of the most dangerous aliens within the United States and recent border crossers. Accordingly, the legal analysis by the Office of Legal Counsel appears reasonable.

3. Please explain your view on how, or whether, the President's executive action on immigration comports with the Constitution's Take Care Clause and Congress's Article I authority over immigration and naturalization.

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that this issue has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

4. At your confirmation hearing, Senator Sessions asked whether you agreed that "someone who enters the country unlawfully" has a "civil right" to work. You responded: "I believe that the right and the obligation to work is one that is shared by everyone in this country, regardless of how they came here. And certainly if someone is here, regardless of status, I would prefer that they be participating in the workplace than not participating in the workplace."

- a. Please explain the legal basis for your assertion that all persons, including persons having entered the United States illegally, have “the right...to work.”

RESPONSE: I was stating my personal belief that it would be better for individuals in this country to be working to support themselves and their families and contributing to our economy than remaining unemployed. But it is my understanding that only citizens and those duly authorized to seek employment by the Department of Homeland Security are legally able to work.

- b. Please explain whether you believe your assertion that all persons present in the United States have a right to work conflicts with provisions of Title 9, specifically 8 U.S.C. § 1324a *et seq.*

RESPONSE: As I previously indicated, only United States citizens and non-citizens who have been duly authorized to seek employment by the Department of Homeland Security have a legal ability to work in the United States.

5. It is now indisputable that the Internal Revenue Service (“IRS”) targeted conservative organizations that were seeking to obtain tax-exempt status. Senate investigators with the Permanent Subcommittee on Investigations found that over 80% of the targeted groups had a conservative political ideology. The Department of Justice (“DOJ” or “Department”) responded by initiating a criminal probe led by a Civil Rights Division attorney who had contributed to President Obama’s campaign in 2012. Little, if any, progress has been made in this investigation thus far.
- a. With respect to IRS targeting of individuals and organizations who ostensibly identify with a conservative or Tea Party viewpoint, will you commit to reassignment of the DOJ’s investigation to a special prosecutor if you are confirmed?

RESPONSE: I believe that it is very important that all investigations by the Department of Justice are conducted in a fair, objective, professional, and impartial manner, without regard to politics or outside influence. We must follow the facts wherever they lead, and must always make our decisions regarding any potential charges based upon the facts and the law, and nothing more. That is what I have always done as a United States Attorney, and it is what I will do if I am confirmed as Attorney General.

In the many years that I have worked at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, “[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges.” *See Memorandum of The Attorney General to All*

Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

- b. Do you believe it was appropriate to assign management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign?

RESPONSE: As stated above, in the many years that I have worked at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, "[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges." *See* Memorandum of The Attorney General to All Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I understand that this is a team of many investigators and prosecutors who have worked together to investigate the matter thoroughly and professionally for more than a year and a half. I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the

public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

- c. Do you believe that assigning management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the DOJ?

RESPONSE: As stated above, in the many years that I have worked at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, "[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges." See Memorandum of The Attorney General to All Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I understand that this is a team of many investigators and prosecutors who have worked together to investigate the matter thoroughly and professionally for more than a year and a half. I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

- d. If you are confirmed, will you commit to keeping Congress informed in a more timely way than the current DOJ leadership has about the status of the investigation?

RESPONSE: If I am confirmed as Attorney General, I am committed to working effectively

and productively with Congress and this Committee. Although I am not familiar with the details of this particular investigation, I assure you that I will provide information to the Committee within the parameters permitted by law and consistent with the Department's law enforcement and confidentiality interests.

6. National security is always of paramount importance for the Attorney General. The recent Paris attack and the rise of ISIS are episodes that show two emerging national security threats that you will confront, if confirmed: foreign fighters and so-called "lone wolf" attacks.
 - a. In your view, does the recent emergence of these threats have any impact on the debate over the impending renewal of the Foreign Intelligence Surveillance Act of 1978 ("FISA")?

RESPONSE: I share your concern regarding the emerging national security threats posed by foreign fighters and lone-wolf attacks and believe that these threats should inform the congressional debate regarding the reauthorization of certain provisions of FISA. It is important that our intelligence and law enforcement professionals have the full panoply of investigative tools and techniques to deal with the ever-evolving threat presented by terrorism and other national security threats, while also ensuring that we use those tools in a way that effectively protects privacy and civil liberties. The Administration has supported the USA FREEDOM Act, which would ensure that the government retained the authority to conduct electronic surveillance of foreign lone wolf terrorists. If I am confirmed as Attorney General, I will work with Congress to pass legislation consistent with the USA FREEDOM Act.

- b. Do you believe that the current "bulk collection" regime under FISA Section 215 is lawful?

RESPONSE: Yes. The "bulk collection" program operates pursuant to court order, has been reviewed and approved by multiple federal judges, and is subject to rigorous oversight by all three branches of government. Our collection of foreign intelligence, however, needs not only to be lawful, but to be conducted in a manner that best protects both our national security and our privacy and civil liberties. I understand that, based on recommendations from the Department of Justice and the Intelligence Community, the President proposed that the government end the bulk collection of telephony metadata records under Section 215, while ensuring that the government has access to the information it needs to meet its national security requirements. The Administration supported the USA FREEDOM Act as a means of enacting this proposal, and, if confirmed, I would work with Congress to reform Section 215 in a manner consistent with the President's proposal.

- c. Do you believe that the incidental collection provision, Section 702, is lawful?

RESPONSE: Yes. My understanding is that Section 702 may only be used to target non-United States persons located outside the United States and may not be used to target foreigners for the purpose of acquiring Americans' communications. Some communications of Americans, however, may be incidentally collected when an American communicates with a 702 target located outside the United States. I understand that such communications are governed by "minimization procedures" that have been found lawful by both the courts and the Privacy and Civil Liberties Oversight Board. If I am confirmed as Attorney General, I will ensure that 702 collection continues in a lawful manner that meets our national security needs and appropriately protects privacy and civil liberties.

- d. President Obama has indicated that he supports a legislative reform of Section 215 bulk collection regime. What are your thoughts on amending Section 215?

RESPONSE: If I am confirmed as Attorney General, I will work with Congress to amend Section 215 in a manner consistent with the President's proposal in order to strengthen the privacy and civil liberties protections, while preserving essential authorities that our intelligence and law enforcement professionals need.

- e. Do you think law enforcement currently has sufficient investigative and legal authority to address the increasing threat from foreign fighters and "lone wolves"?

RESPONSE: It is important that our intelligence and law enforcement professionals have the full panoply of investigative tools and techniques to deal with the ever-evolving threat presented by terrorism and other national security threats, while also ensuring that we use those tools in a way that effectively protects privacy and civil liberties. If I am confirmed as Attorney General, I will work with law enforcement and Congress to evaluate any gaps in existing authorities and to ensure all appropriate tools are brought to bear to respond to these threats.

7. If you are confirmed, would the FBI, ATF, or any other DOJ agencies be permitted to allow criminals to obtain firearms as part of investigations undertaken by your Justice Department? If so, please describe the circumstances under which you believe such operations would be appropriate.

RESPONSE: The Department's law enforcement components and the United States Attorneys' Offices take seriously the need to ensure that investigations and prosecutions are conducted in a way that preserves public safety as well as officer safety. Accordingly, the Department has provided guidance to all United States Attorneys' Offices and Department law enforcement components regarding risk assessment and mitigation for law enforcement operations in criminal matters.

8. Are you committed to transparency between the DOJ and Congress, and will you commit to prompt, complete, and truthful responses to requests to information from Congress about outstanding issues related to Operation Fast and Furious?

RESPONSE: I am committed to transparency between the Department and Congress and, if I am confirmed as Attorney General, I will work to promote such transparency while also preserving the Executive Branch's proper functioning and the separation of powers.

9. The DOJ announced two weeks ago that two Yemeni nationals charged with conspiring to murder American citizens abroad and providing material support to al-Qaeda will be prosecuted by your office in the Eastern District of New York. What specific circumstances that you can address here lead you to believe that civilian courts are a more appropriate or effective venue than military tribunals for the prosecution of the Yemeni nationals that have been charged by your office?

RESPONSE: I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In any particular case, representatives of the agencies who are tasked with protecting the American people, including the Department of Defense, the Department of Homeland Security, the Department of Justice and agencies in the Intelligence Community, work together to determine the most effective tools to apply in that case, based on the particular facts and applicable law. As the United States Attorney for the Eastern District of New York, my role to date has been limited to determining whether or not there was a prosecutable federal case, not which was the appropriate tool to employ.

Because the cases to which you refer are ongoing prosecutions, I cannot comment on the specific facts or decision-making processes in those matters, other than to indicate that the process described above was observed.

10. Do you believe that detainees currently being held at the United States Naval Base at Guantanamo Bay, Cuba, are entitled to criminal trials in the civilian court system within the United States?

RESPONSE: It is lawful for the United States to detain enemy combatants at the military facility at Guantanamo Bay without criminal charge or trial for the duration of the conflict, consistent with the 2001 AUMF, as informed by the law of war, and subject to review of their detention by the courts.

11. In 2013, the DOJ intervened in litigation over the Louisiana Scholarship Program, a state initiative that provides school vouchers to low-income families. An analysis by the State of Louisiana found that the program promoted diversity in Louisiana schools and actually assisted in speeding up federal desegregation efforts. Most of the schoolchildren who

benefit from this program are members of minority groups. This year, more than 13,000 students applied and nearly 7,500 schoolchildren were awarded a scholarship voucher. These children now get the chance to excel and attend high-quality schools that their parents can choose for them because of the program. Ultimately, after public pressure, the Justice Department backed off trying to kill the program entirely, but still insisted that the state provide demographic data about the students to a federal judge overseeing the lawsuit. Accordingly now Louisiana has to provide data for the upcoming school year and for every school year as long as the program is in place.

- a. Do you agree with the DOJ's decision to intervene in this case?
- b. If confirmed, will you use Justice Department resources, like your predecessor has, in an effort to obstruct, monitor, or regulate school-choice programs?
- c. Will you commit to asking the federal district court with jurisdiction over this case to discontinue the reporting requirement if you are confirmed?

RESPONSE: I cannot comment on this issue because it is my understanding that it is in active litigation. It is my understanding that the Department has not taken a position against school voucher programs. That would continue to be my position if I am confirmed as Attorney General.

12. A 2013 report by the DOJ's Inspector General revealed disturbing systemic problems related to the operation and management of the DOJ's Civil Rights Division. If confirmed, will you commit to implementing the recommendations made by the Inspector General in that report?

RESPONSE: If I am confirmed as Attorney General, I will commit to ensuring that all Department components are responsive to recommendations made by the Office of Inspector General.

13. At your confirmation hearing, I asked you about the Francois Holloway case and why you consented to an order by Eastern District of New York Judge John Gleeson vacating two of Mr. Holloway's convictions for armed carjacking. In your response, you mention "a judicial proceeding before the court at that time" that "the court wanted us to take a second look at."

- a. Please describe what you meant by the term "judicial proceeding before the court."

RESPONSE: A motion had been filed pursuant to the Federal Rules of Civil Procedure to reopen the defendant's habeas corpus proceedings.

- b. Which party initiated the "judicial proceeding before the court" that you referred to in your answer?

RESPONSE: The defendant initiated the proceeding by filing the motion referenced above.

- c. You stated that “our view was that we had to look at the case consistent with many of the initiatives that we were being put in place now by the DOJ certainly with respect to clemency and with respect to how we look at offenders who have served significant time.” Please state the DOJ initiatives you consulted in your re-examination of the Holloway sentence and identify any initiatives on which you based your decision to consent to Judge Gleeson’s order vacating Mr. Holloway’s armed carjacking sentences.

RESPONSE: The Department of Justice’s Smart on Crime initiative calls upon federal prosecutors to ensure that finite Department resources—including finite corrections resources—are devoted to the most important law enforcement priorities, to promote fairer enforcement of the law and eliminate unwarranted sentencing disparities, and to ensure that the punishment for all offenders fits the crime.

- d. Please identify any DOJ initiatives that provide for early release for violent offenders or recidivist violent offenders like Mr. Holloway.

RESPONSE: Federal prosecutors must evaluate the circumstances of each offense and each offender in order to determine what sentence to seek. Ultimately, of course, it is up to the sentencing judge to impose sentence, and to decide any application to reduce a sentence after it has been imposed.

- e. You testified that you reconsidered whether to consent to an order to vacate Mr. Holloway’s sentence “numerous times.” Please explain why you ultimately consented to the vacatur after initially refusing to and suggesting to the court that Mr. Holloway contact the Office of the Pardon Attorney or seek executive commutation of his sentence.

RESPONSE: After studying the facts of the case, the conduct of Mr. Holloway during his twenty years of incarceration, and soliciting the view of the victims of the crime, I decided not to oppose Mr. Holloway’s request that Judge Gleeson reconsider his sentence.

- f. Mr. Holloway’s case had achieved a remarkable degree of finality—his appeal was rejected by the Supreme Court and he had been sentenced decades before Judge Gleeson released him, effectively, for time served. Please state the legal and policy basis for your decision to re-examine the case given the degree of finality it had achieved.

RESPONSE: After examining the facts of the case, the defendant’s motion, and after

receiving input from the victims, I decided that it was appropriate not to oppose the Court reconsidering the sentence imposed. This decision was in keeping with the obligation of all prosecutors to seek just outcomes, and to carefully weigh the facts and circumstances of each offense and offender.

- g. You stated that your office had “the ability to let the judge review [Mr. Holloway’s] sentence again by keeping it in the court system.” Please explain your understanding of the circumstances under which federal prosecutors should consent to review by a federal judge of sentences which have achieved finality and explain when federal prosecutors should act, as you testified, to “keep[]” those sentences “in the court system.”

RESPONSE: Federal prosecutors must evaluate any request for resentencing based on a thorough review of the facts and circumstances of the case, the conduct of the defendant both before and after conviction, and the applicable laws governing the defendant’s application.

- h. Do you agree with Judge Gleeson, who wrote in his May 14, 2014, memorandum in the Holloway case, that your prosecutors from the Eastern District of New York employ “ultraharsh mandatory minimum provisions to annihilate a defendant who dares to go to trial,” like Mr. Holloway?

RESPONSE: Federal prosecutors in the Eastern District of New York, like those throughout the country, strive to seek just penalties that are commensurate with the severity of the crime and the characteristics of the offender.

- i. Do you believe that the prosecutors who tried Mr. Holloway employed “ultraharsh minimum sentences to annihilate” him because he exercised his constitutional right to a jury trial?

RESPONSE: The prosecutors who tried Mr. Holloway sought to hold him accountable for the serious crimes he had committed. As United States Attorney, it is my obligation to consider defendants’ applications based on a careful review of all of the circumstances that exist at the time such application is made.

- j. Do you agree with the recommendation of the U.S. Sentencing Commission in its 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, that Congress should amend 18 U.S.C. § 924(c) to confer on federal district judges the discretion to impose concurrent sentences under that provision?

RESPONSE: If I am confirmed as Attorney General, I look forward to continuing the dialogue between the Department, the Sentencing Commission, and Congress regarding

the important issue of mandatory minimums. It would be premature for me to opine on that specific recommendation before soliciting input from all relevant stakeholders.

- k. Please describe with particularity—citing case numbers, captions, etc.—any other cases in which your office, during your tenure as U.S. Attorney consented to an order vacating convictions under 18 U.S.C. § 924 or any other criminal conviction.

RESPONSE: I am not aware of any such cases.

14. As a U.S. Attorney and the Chair of the Attorney General’s Advisory Committee, you are no doubt familiar with DOJ’s recent “Smart on Crime” Initiative, which addresses a number of criminal justice issues like prioritizing prosecutions, sentencing disparities, recidivism, and incarceration of non-violent offenders. Attorney General Holder has advocated reduction of the federal sentencing guideline levels that apply to most drug-trafficking offenses, including trafficking of hard drugs like heroin. The Holder Justice Department also announced a new clemency initiative last year that invites clemency petitions from offenders who meet a number of criteria. Thousands of offenders, including drug traffickers, fall within those criteria.

- a. What are your views on those DOJ initiatives and proposals?

RESPONSE: The Smart on Crime initiative is designed to ensure finite public safety resources are devoted to the most important law enforcement priorities; to promote fairer enforcement of the laws and alleviate disparate impacts of the criminal justice system; to ensure just punishments for all offenders; to improve prevention and reentry efforts to reduce reoffending; and to strengthen protections for vulnerable populations. I support these goals. I also fully support the ongoing effort to identify for the President worthy candidates for clemency to assist him in properly executing the President’s constitutional responsibility in this area.

- b. Do they make the work of federal prosecutors harder?

RESPONSE: The role of the federal prosecutor is to see that justice is done. Every day, federal prosecutors across the country seek to improve public safety, reduce crime and do justice. I believe the Smart on Crime initiative is designed to be consistent with these goals. I think the initiative supports the work of federal prosecutors.

c. Do they make the American people safer?

RESPONSE: Yes. By ensuring finite public safety resources are devoted to the most important law enforcement priorities, by reducing reoffending and by preventing crime, the Smart on Crime initiative will make the American people safer.

d. Are you going to continue them if you are confirmed as Attorney General?

RESPONSE: If I am confirmed as Attorney General, I will review the Smart on Crime initiative and evaluate its impact. I will continue the parts of it that are effective and consider new initiatives to further the goals of public safety and justice.

e. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for violent offenders who have served a substantial portion of the sentences?

RESPONSE: As I indicated above, if I am confirmed as Attorney General, I will review these initiatives and evaluate their impact. I will continue those that are effective and consider new initiatives to further the goals of public safety and justice. I do not support release of violent offenders for no corrections or public safety purpose. However, I believe sentencing and corrections policies should be reviewed periodically to ensure that just punishment is meted out for all offenders, that reoffending is minimized through programming and other corrections policies, that those considering criminal activity are deterred to the greatest extent possible, and that the purposes of punishment, as set out in the Sentencing Reform Act, are otherwise served.

f. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for offenders who have received so-called "stacked" or consecutive mandatory minimum sentences under 18 USC 924 or other provisions of federal law?

RESPONSE: In an era of advisory guidelines, I believe mandatory minimum sentencing statutes remain important to promote the goals of sentencing and public safety. At the same time, I recognize that some reforms of existing mandatory minimum sentencing statutes are needed. I understand that Members of Congress have introduced various bills in the 113th Congress to reform mandatory minimum sentencing statutes. If I am confirmed as Attorney General, I look forward to working with these Members of Congress to identify those mandatory minimum statutes that need reform and to enact legislation to do so.

15. The 2013 Cole Memorandum explains the DOJ's priorities on enforcement of federal law regarding marijuana offenses. Several jurisdictions have recently legalized cultivation

and distribution of marijuana for personal use, in effect, initiating a series of state regulatory regimes that contravene federal drug laws.

- a. Do you agree with the current DOJ enforcement policies and priorities outlines in the Cole Memorandum?

RESPONSE: As United States Attorney, and if I am confirmed as Attorney General, I am committed to enforcing the Controlled Substances Act (CSA). The Cole Memorandum sets out eight priority areas for federal marijuana enforcement. The Cole Memo also acknowledges the importance of examining the particular circumstances of each case and the authority of the Department to pursue investigations and prosecutions that otherwise serve an important federal interest. Accordingly, the Department's focus is on applying its limited investigative and prosecutorial resources to enforcing the CSA in a manner that addresses the most significant threats to public health and safety.

- b. Do you consider the DOJ's policy, as it is being implemented now, to reflect legitimate enforcement discretion consistent with the Take Care Clause?

RESPONSE: In all areas of civil and criminal enforcement, the Department uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant public health and public safety threats. In every instance, prosecutors must make decisions about how limited resources are brought to bear to best confront those threats. The Department's policies, including in the area of marijuana enforcement, are crafted to provide guidance on doing so in an effective, consistent and rational way, while giving prosecutors discretion within the constraints of that guidance to take into account the circumstances of each case.

- c. If you are confirmed, how do you plan to measure the effect of the DOJ's policy on the federal interest in enforcement of drug laws?

RESPONSE: If I am confirmed as Attorney General, the Department will continue to consider data of all forms—including existing federal surveys on drug usage, state and local research, and, of course, feedback from the community and from federal, state, and local law enforcement—on the degree to which existing Department policies and the state systems regulating marijuana-related activity protect federal enforcement priorities and the public. The Department will continue to collect data and make these assessments through its various components and will continue to work with the Office of National Drug Control Policy and other partner agencies throughout the government to identify other mechanisms by which to collect and assess data on the effects of these state systems.

16. The recent hacking of Sony's computers has demonstrated that a major area of vulnerability to our national security and infrastructure is cyber attacks, often by foreign hackers or governments.

- a. In your view, what are the greatest threats we face from cyber terrorism?

RESPONSE: As I mentioned during my testimony before the Committee, a cyber attack carried out on behalf a terrorist entity is one of the greatest fears of any prosecutor, and we must be nimble in our efforts to prevent, to detect and to disrupt such a threat. My impression, based on my experience as United States Attorney, is that while terrorist groups have generally not reached the skill level of nation-state actors, we cannot ignore their expressed desires to attack us through any means, including through cyber attacks. Regardless of the specific adversary at issue, they could cause significant damage and destruction through cyber attacks—in particular, through attacks on systems that support our critical infrastructure, including industrial control systems, hospitals, government networks and similarly essential systems. If I am confirmed as Attorney General, I plan to use the full extent of our authorities to identify and disrupt—whether through prosecution or other means at our disposal—those who would threaten our country by seeking to attack these systems or to position themselves to do so in future.

- b. What tools does law enforcement need, based on your experience as a U.S. Attorney, to protect networks and critical infrastructure?

RESPONSE: In my experience as the United States Attorney for the Eastern District of New York, I believe a comprehensive approach, including a collaborative relationship between government and private sector, is necessary to protect networks and critical infrastructure. Emphasis on the prevention and detection of this threat is critical and, if I am confirmed as Attorney General, I would work to ensure that our law enforcement community has the technological resources and legal authorities needed to stay ahead of this threat, and strengthen the relationship between government and private industry.

17. In recent years, the DOJ has aggressively pursued states that have enacted a wide array of voter ID provision. You have made a number of public comments about the DOJ's litigation in this area of the law and have pledged to continue litigation that Attorney General Holder has initiated. Please describe, with particularity, examples of voter ID provisions that a state could enact which you believe would pass statutory and constitutional muster.

RESPONSE: I do not have any categorical views on these issues in the abstract. My general understanding is that the Department considers questions of the validity of voting practices, such as state voter identification laws, based on the particular requirements of the federal law being enforced, based on the particular facts of the practice being investigated and based on the particular laws and facts in the jurisdiction.

As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

However, the analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

18. A number of commentators have expressed the opinion that voter fraud simply doesn't exist or the alternative opinion, that, if it does, it is minor problem with no real effect on the integrity of elections.

- a. Do you agree that voter fraud does not exist or is so insignificant that it does not threaten the integrity of elections?

RESPONSE: I am not personally familiar with the specifics of studies regarding these issues, nor do I have any categorical views on these issues in the abstract. One of the important responsibilities of the Department of Justice is to investigate and prosecute violations of the federal criminal laws, including those federal laws that criminalize various types of election fraud. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department's jurisdiction, including the federal criminal laws regarding election fraud, according to their terms, in a fair and even-handed manner.

- b. Do you think that voter fraud is a bona fide issue that states should be entitled to address with voter ID laws?

RESPONSE: As stated above, I do not have any categorical views on these issues in the abstract. My general understanding is that the Department considers questions of the validity of voting practices, such as state voter identification laws, based on the particular requirements of the federal law being enforced, based on the particular facts of the practice being investigated and based on the particular law and facts in the jurisdiction.

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19. You previously stated in the context of North Carolina's voter ID law that:

Fifty years after the March on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for....People try and take over the State House and reverse the goals that have been made in voting in this country....But I'm proud to tell you that the Department of Justice has looked at these laws, and looked at what's happening in the Deep South, and in my home state of North Carolina [that] has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits continue.

Do you believe that North Carolina's voter ID law is a pretext for, or was motivated by, racial discrimination?

RESPONSE: My general understanding is that the Department has brought suit challenging certain aspects of North Carolina's 2013 omnibus election law as racially discriminatory in purpose and result. Because this matter is the subject of pending litigation by the Department, I cannot comment further.

20. First Amendment freedoms that protect the press became a lot more tenuous during Mr. Holder's administration of the DOJ. In May 2013, the Department obtained phone records for the Associated Press ("AP") without the knowledge of that organization, reportedly as part of an investigation of an AP story on CIA operations in Yemen. It then came to light that in 2010 the Holder Justice Department obtained a warrant to search the emails of a Fox News reporter James Rosen—the Department claimed Rosen was a potential co-conspirator with a State Department contractor in violation of the Espionage Act. Since then the DOJ has issued new guidelines governing how it obtains evidence from journalists. The guidelines maintain in that notice of a subpoena may be withheld only if notifying the journalist would present a "clear and substantial threat" to an investigation or to national security.

a. Do you agree that the Department's treatment of journalists has been heavy-handed and that reform of DOJ practices was necessary?

RESPONSE: Because my Office was not involved in the investigations described above, I cannot address those specific matters.

I agree that the revisions to the Department's policies and practices regarding the use of certain law enforcement tools to obtain information from, or records of, members of the news media were appropriate. In my view, the revised policies and practices strike the proper balance between law enforcement and free press interests. Significantly, the revised policies and practices cover law enforcement tools and records, and ensure robust, high-level consideration of the use of those tools to obtain information from, or records of, members of the news media.

- b. Do you believe that the DOJ investigations described above pose a serious risk of chilling free speech?

RESPONSE: Because my Office was not involved in the investigations described above, I cannot address those specific matters.

As a general matter, I believe that persons entrusted with safeguarding information related to our national security should be held accountable when they breach that trust. I also believe that a free press plays a critical role in ensuring government accountability. In my view, the Department's revised media policies and practices strike the proper balance between law enforcement and free press interests.

- c. Do you support the new guidelines?

RESPONSE: Yes, I believe the revised policies and practices strike the proper balance between law enforcement and free press interests.

- d. As a federal prosecutor, you are no doubt aware of the balance between individual liberties and the need to conduct thorough and effective investigations. Do the guidelines strike the right balance?

RESPONSE: Yes, in my view, the Department's revised policies and practices strike the proper balance between law enforcement and free press interests.

- e. How would the Lynch Justice Department distinguish itself from the Holder Justice Department when it comes to the investigation of journalists?

RESPONSE: Given the essential role that members of the news media play in our society, I believe that federal investigators and prosecutors should view the use of certain law enforcement tools to obtain information from, or records of, non-consenting members of the news media as an extraordinary measure, not a standard investigatory practice. If I am confirmed as Attorney General, I would give careful consideration to, and closely scrutinize, any request for authorization to obtain information from, or records of, a member of the news media; or to investigate or prosecute a member of the news media. In my view, the revised media policies and practices both provide an appropriate framework with which to conduct this critical analysis, and strike the appropriate balance between law enforcement and free press interests.

21. There have been significant developments recently at the DOJ regarding policies on civil asset forfeiture in response to abuses by U.S. Attorney's Offices and federal and state agencies. Attorney General Holder just announced that the DOJ will end the Equitable Sharing Program, which essentially apportions billions of dollars in seized assets between

federal, state, and local authorities—a huge pool of money that clearly created a risk of encouraging aggressive, if not unlawful, seizures from individuals who are not charged with a crime, have not been indicted and have not enjoyed any due process whatsoever. Your office in the Eastern District of New York alone has seized over \$100 million in recent years.

- a. Do you believe that there have been inappropriate or excessive seizures by your office or by the DOJ with respect to civil asset forfeitures, adoptive seizures, and equitable sharing practices? If so, please describe with particularity any such cases.

RESPONSE: First of all, to clarify, I understand that Attorney General Holder’s January 16, 2015, Order generally prohibited the practice of federal adoptions of assets seized by state and local law enforcement. It did not end the Equitable Sharing Program. That said, the adoption Order came as part of the Department’s comprehensive, ongoing review of the Asset Forfeiture Program, including the Equitable Sharing Program.

I can speak with regard to the seizures made in connection with civil forfeiture actions prosecuted in the Eastern District of New York, and I believe they have been appropriate. Every seizure in my district, and indeed across the country, must be based on probable cause that the property is connected to crime, and is often pursued only after a federal judge issues a warrant based on such a finding. That probable cause is the same burden of proof required to arrest someone. In any contested forfeiture, the government must prove by a preponderance of the evidence, in federal court, that the property is connected to a crime.

As indicated by my Office’s forfeiture records, adoptive seizures represent a tiny fraction of the Eastern District of New York’s forfeiture litigation. An internal review revealed that approximately thirty-four adoptive seizures, representing a total asset value of roughly \$2.95 million in seized assets, were referred by federal agencies to the Office since 2010. Further, of these thirty-four adoptive seizure referrals, my Office declined to accept half based upon its own assessment of the merits of the seizure.

- b. After inquiries by members of Chairman Grassley’s staff, a company in your district, Hirsch Brothers, was recently returned \$500,000 that your office seized from it as part of a civil asset forfeiture. Please explain the basis for the seizure and the reason why the funds were returned only after a congressional inquiry was initiated.

RESPONSE: 31 U.S.C. § 5324 provides that “[n]o person shall, for the purpose of evading” certain statutory reporting requirements primarily set forth in 31 U.S.C. §§ 5313(a), 5325 and 5326 “cause or attempt to cause a domestic financial institution to fail to file a report” for the deposit of amounts in excess of \$10,000.00. In May 2012, my Office presented evidence to a federal magistrate judge that the Hirsch brothers’ business, Bi-County Distributors, Inc. (“Bi-County”), had deposited over \$1.4 million in cash in what the evidence indicated was likely a “structured” manner, intended to evade federal currency reporting requirements. Based upon this

showing, the federal magistrate judge found that there was probable cause for the seizure of the structured deposits and issued a warrant to seize Bi-County's account.

Immediately after the seizure, my Office notified Bi-County and its then-attorney of the seizure. From May 2012 to May 2014, the parties engaged in settlement discussions, during which Bi-County organized its records relating to its cash receivables, provided them to the government and produced a forensic accounting of its cash business. As discussions with Bi-County's prior attorney did not result in a resolution of the matter, Bi-County retained new attorneys who, in October 2014, filed an action seeking return of the seized funds. In response, and to avoid further litigation, my Office renewed its efforts to resolve this matter with Bi-County's new attorneys.

After Bi-County filed its action and upon completion of the investigation and exchange of information, my Office determined that the settlement represented an appropriate resolution of this matter. These efforts culminated in a mutually agreeable settlement in principle of the action. The parties ultimately memorialized their settlement in a publicly-filed stipulation. As with all settlements, both parties, represented by their counsel, negotiated aspects of a settlement upon which they could agree. The stipulation also sets forth a mutually agreed upon description of the procedural history of the negotiations between the parties and includes, among other things, an acknowledgment by Bi-County and its principals that they have been advised of the laws against structuring.

The Bi-County settlement was negotiated and resolved in the ordinary course of litigation. The parties had drafted and agreed upon a final settlement stipulation, which the Hirsch brothers and their counsel already had signed before my Office received Senator Grassley's January 20, 2015 correspondence containing an inquiry about the Bi-County case.

- c. Has your office implemented the reforms announced by Attorney General Holder?

RESPONSE: My Office has implemented and is in compliance with the reforms that Attorney General Holder recently announced with respect to adoptive forfeitures.

- d. What steps are you taking in your office to ensure that no additional individuals or companies like Hirsch Brothers will have their assets wrongfully seized?

RESPONSE: As noted above, the action against Bi-County's assets was commenced pursuant to a seizure warrant issued by a United States Magistrate Judge based upon an independent, judicial determination of probable cause to believe that Bi-County had deposited over \$1.4 million of United States currency in a "structured" manner, in violation of 31 U.S.C. § 5324.

In all cases like the Bi-County case, where bank accounts are seized, such seizures can be effectuated only after the review, approval and authorization of a United States Magistrate Judge. Before seizure warrants even are submitted for judicial authorization, my Office carefully

reviews all available information which has resulted in the declination of many civil asset forfeiture cases presented for prosecution. These judicial safeguards, in conjunction with my Office's internal vetting process, have prevented wrongful seizures in the past and will prevent them in the future. If, following a seizure, my Office is presented with, or obtains information that leads to a determination that the forfeiture of the seized asset should not be pursued on the merits, then my Office has, and will continue to, consider settlement or a return of the asset, as appropriate.

- e. What steps do you plan to take, if confirmed, to ensure that the DOJ returns wrongfully seized assets promptly and does not continue to seize assets wrongfully?

RESPONSE: I am keenly aware of concerns about civil asset forfeiture, and I take those concerns very seriously. As mentioned above, the Department has embarked on an ongoing review of its Asset Forfeiture Program (which has so far resulted in the policy change on adoptions) and if I am confirmed as Attorney General, I look forward to continuing that review, to ensure that Asset Forfeiture tools are used effectively and appropriately to take the profit out of crime and return assets to victims, while safeguarding civil liberties and the rule of law.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015**

QUESTIONS FROM SENATOR PERDUE

References to Senator Perdue's first set of Questions for the Record are referred to below as "QFR" followed by the number of the relevant question.

1. In QFR #1, I asked you to explain your understanding of the limits of the president's discretion to enforce federal law. In your answer, you referred me to the Office of Legal Counsel but conceded that there are "of course, recognized constitutional limitations on the President's authority." Please state with particularity your understanding of the limits on the president's authority, making specific reference to the "constitutional limitations" you mentioned in your original answer. Please consult any relevant legal authorities, including Supreme Court precedent, *see, e.g.*, Justice Jackson's *Youngstown* concurrence, in order to explain your understanding of the scope and nature of the limitations you cited.

RESPONSE: Under our system of separated powers, it is the President's obligation to take care that the laws are faithfully executed, and he cannot abdicate his responsibility to enforce duly-enacted laws. Nor can he, consistent with the Constitution and its allocation of powers between the branches, attempt to, in effect, legislate or to rewrite laws under the pretense of exercising his enforcement discretion.

2. In response to QFR #4a, you explained your "personal belief that it would be better for individuals in this country to be working to support themselves and their families and contributing to our economy rather than remaining unemployed." Notwithstanding your personal belief, if you are confirmed as Attorney General, will you commit to enforcement all provisions of federal law that concern employment of illegal immigrants or other persons unlawfully within the United States?

RESPONSE: Yes.

3. In response to QFR #5a regarding whether you would commit to the assignment of a special prosecutor to the IRS targeting case, you stated that "the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment." Please explain whether you believe that the IRS targeting case would present: (1) a conflict of interest; or (2) other extraordinary circumstances in the public interest meriting the assignment of a special prosecutor. Essentially, please answer the original

question either negatively or affirmatively: Will you commit to the assignment of a special prosecutor in this matter? Please answer “yes” or “no” and explain your answer.

RESPONSE: In my current position as United States Attorney for the Eastern District of New York, I am not privy to the details of the current investigation concerning allegations of improper targeting of certain tax exempt organizations by IRS employees. It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department’s Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department’s regulations, 28 C.F.R. § 600.1. If confirmed as Attorney General, I can assure the Committee that I will request a briefing concerning the status of the investigation and can assure the Committee that all aspects of the investigation will be conducted in accordance with Department policies and procedures. Based on the information currently available to me, I have no reason to question the ability of our career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally and therefore, have no reason to conclude that a conflict of interest exists that would preclude our career prosecutors from discharging their responsibilities.

4. In response to QFR #5b, you provided a form response that was identical to your responses to QFR #5a. This is a straightforward, binary question that I request you answer either negatively or affirmatively: Do you believe it was appropriate to assign management of the Department of Justice’s investigation of IRS targeting to a DOJ lawyer who contributed to President Obama’s campaign? Please answer “yes” or “no” and explain your answer.

RESPONSE: In my current position as United States Attorney for the Eastern District of New York, I am not privy to all of the facts concerning the assignment of a career prosecutor from the Civil Rights Division to the investigative team looking into allegations that IRS employees targeted certain tax-exempt organizations. It is my understanding that the attorney that you are referring to is a career prosecutor and one member of a team assigned to the investigation who is working alongside a career prosecutor from the Criminal Division along with agents from the FBI and TIGTA. It is also my understanding that the Department has concluded that the attorney’s engagement in lawful political activity did not amount to a conflict that disqualified the attorney from the investigation under applicable regulations. Lastly, I am aware that in 2014, then-Deputy Attorney James Cole publicly testified before the House Committee on Oversight and Government Reform and explained why the Department concluded that the attorney’s assignment to the investigation was in accordance with applicable regulations. If confirmed as Attorney General, I will ensure that that the investigation is conducted in accordance with Department policies and procedures.

5. In response to QFR #5c, you provided a form response that was identical to your responses to QFRs #5a and #5b. Again, this is a straightforward, binary

question that I request you answer either negatively or affirmatively: Do you believe that assigning management of the Department of Justice's investigation of IRS targeting to a Department of Justice lawyer who contributed to President Obama's campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the Department of Justice? Please answer "yes" or "no" and explain your answer.

RESPONSE: In my current position as United States Attorney for the Eastern District of New York, I am not privy to all of the facts concerning the assignment of a career prosecutor from the Civil Rights Division to the investigative team looking into allegations that IRS employees targeted certain tax-exempt organizations. It is my understanding that the attorney that you are referring to is a career prosecutor and one member of a team assigned to the investigation who is working alongside a career prosecutor from the Criminal Division along with agents from the FBI and TIGTA. It is also my understanding that the Department has concluded that the attorney's engagement in lawful political activity did not amount to a conflict that disqualified the attorney from the investigation under applicable regulations. Lastly, I am aware that in 2014, then-Deputy Attorney James Cole publicly testified before the House Committee on Oversight and Government Reform and explained why the Department concluded that the attorney's assignment to the investigation was in accordance with applicable regulations. If confirmed as Attorney General, I will ensure that that the investigation is conducted in accordance with Department policies and procedures.

6. QFR #7 asked whether your Department of Justice would use so-called "gunwalking" as a valid investigative technique. You did not answer the question and instead cited "guidance" issued to U.S. Attorney's Offices. Please state either negatively or affirmatively whether the Lynch Department of Justice will view gunwalking as a legitimate investigatory technique to be used by federal law enforcement agencies. Please answer "yes" or "no" and explain your answer.

RESPONSE: It is not clear to me what this question means by "gunwalking," but it is my understanding that the Attorney General has stated unequivocally, and the Inspector General's report found that the tactics employed in Operation Fast and Furious were flawed, and that the IG report also found that the operation failed to adequately mitigate risks to public safety, and that the Department has taken extensive steps to ensure that such tactics are not used again in the future.

7. In response to QFR #11 and its subparts regarding the Louisiana school voucher litigation, you stated that "I cannot comment on this issue because it is my understanding that it is in active litigation." Currently, the Department of Justice is not a party to that litigation. Accordingly, I again respectfully request that you answer QFR #11 and its subparts.

RESPONSE: The Department intervened and has been a party to the *Brunfield v. Dodd* case since 1975. *Brunfield* remains in active litigation. *Brunfield v. Dodd* is a case that was brought by black students and families four decades ago on behalf of all black schoolchildren in Louisiana. In

1975, the State of Louisiana was placed under federal court order to end the State's practice of directing resources to private schools in a manner that kept its education system segregated, in violation of the Constitution and federal law. That order remains in place today.

8. In response to QFR #11b, you stated that "I cannot comment on this issue because it is my understanding that it is in active litigation." That QFR, however, does not concern the Louisiana litigation but addresses prospective litigation that you may choose to undertake if you are confirmed. Accordingly, I again respectfully request that you describe whether you will use Justice Department resources, like your predecessor has, in an effort to obstruct, monitor, or regulate school-choice programs. Please answer "yes" or "no" and explain your answer.

RESPONSE: I cannot speculate on what litigation will be undertaken in the future. The Department does not oppose Louisiana's school voucher program, and has not sought to prevent any student from participating in the state's voucher program.

9. In response to QFR #11c, you stated that "I cannot comment on this issue because it is my understanding that it is in active litigation." The question asked only whether your Justice Department would consent to discontinue the reporting requirement if you are confirmed. The Department of Justice is not currently a party to the litigation. Please answer "yes" or "no" and explain your answer.

RESPONSE: The Department has been a party to the *Brumfield v. Dodd* case since 1975. *Brumfield* remains in active litigation. Since 1985, the State of Louisiana has had a legal obligation in *Brumfield* to report information about state assistance to private schools. Consistent with that requirement, the United States asked the State of Louisiana to provide basic information regarding the school voucher program and the impact of the State's funding and assignment of students through that program on the state's court-ordered desegregation obligations.

10. QFR #12 addressed the 2013 report by the DOJ's Inspector General that revealed disturbing systemic problems related to the operation and management of the DOJ's Civil Rights Division and specifically asked whether you would commit to implementing those recommendations. Instead of answering either negatively or affirmatively, you stated that you would commit to ensuring "responsive [ness]." Please specifically answer whether you will commit to implementation of the 2013 report's recommendations, not whether you will ensure "responsive[ness]," as a general matter, to recommendations by the Inspector General.

RESPONSE: I have not had an opportunity to review the Office of the Inspector General's (OIG) 2013 report about the Civil Rights Division. However, I understand that the Division has already taken steps to implement many of the recommendations contained in the report. If confirmed as Attorney General, I will ensure that the Civil Rights Division has responded, as appropriate, to the

recommendations in the OIG report.

11. In response to QFR #13c, you cited the “Smart on Crime” initiative as the basis for your decision to consent to Judge Gleeson's order to vacate Francois Holloway’s sentences for armed carjacking. One of the five principles of the Smart on Crime initiative announced in the Attorney General's August 2013 report is “Protecting Americans from *violent crime*” (emphasis added). *Smart on Crime: Reforming the Criminal Justice System for the 21st Century*, Department of Justice (Aug. 2013), available at <http://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf> at 2. The Attorney General explained that “Smart on Crime” is designed to target “*non-violent, low-level offenses*” and “certain people who have committed *low-level, nonviolent* drug offenses, *who have no ties to large-scale organizations, gangs, or cartels...*” (emphasis added). *Id.* at 3. The report further states that the Bureau of Prisons may consider reductions in sentences for inmates facing extraordinary and compelling circumstances “who did not commit *violent crimes*” (emphasis added). *Id.* The report repeatedly emphasizes that the initiative is aimed at low-level and nonviolent offenders. *See, e.g., id.* at 1-4. Accordingly, please explain your belief that the “Smart on Crime” initiative justified the early release of Francois Holloway, a violent, recidivist offender who organized and ran a chop shop that processed stolen and carjacked cars.

RESPONSE: As I described in my testimony before the Committee, our view of the matter was that we should review the case in a manner consistent with a number of initiatives being implemented by the Department—including, among others, the Smart on Crime initiative and the clemency initiative—focused on ensuring that offenders serve a period of time in prison proportional to the severity of their offenses. The ultimate sentencing determination was made by the Court.

12. Please explain whether the fact that Francois Holloway faced years of back-up time for a New York State drug-trafficking conviction factored into your decision to consent to Judge Gleeson's order to vacate Holloway's sentences for armed carjacking.

RESPONSE: It did not factor into my decision.

13. Please describe with specificity – citing case numbers, captions, etc. – all cases handled by the U.S. Attorney's Office for the Eastern District of New York during your tenure as U.S. Attorney in which the “Smart on Crime” initiative, or any other Department of Justice initiative, was cited in support of the early release of any offender from Bureau of Prisons' custody.

RESPONSE: In virtually all cases, defendants make requests and applications to the Court for

leniency or a reduction in sentence based on a wide variety of grounds. Indeed, the Eastern District of New York receives hundreds of such requests per year. It would be impracticable to determine how many of these applications (some of which are made orally) cited the Smart on Crime or other Department of Justice initiatives. In all cases, it is the Court that decides what sentence to impose on any individual defendant, and whether there is a valid basis to revisit that sentence.

14. If confirmed, will you promulgate Department of Justice initiatives that recommend early release for violent or recidivist offenders?

RESPONSE: Any early release of offenders from federal imprisonment terms can only come as a result of—and must be in accordance with—the laws as enacted by Congress. Current law strictly limits early release of federal offenders. If confirmed, I will follow and abide by all of the corrections laws, including those concerning the confinement of federal prisoners.

15. You responded to QFR #13d with generalities regarding the professional responsibilities of federal prosecutors and judges and did not answer the question. Please specifically identify any Department of Justice initiatives that recommend early release for violent offenders.

RESPONSE: Any early release of offenders from federal imprisonment terms can only come as a result of—and must be in accordance with—the laws as enacted by Congress. Current law provides for limited early release opportunities, including, for example, opportunities to earn prison credits for good behavior, and for completion of residential drug treatment in prison. All of the Department of Justice efforts and initiatives strictly comply with program requirements, as set forth in federal law.

16. In response to QFR #14e, you wrote that “I do not support release of violent offenders for no corrections or public safety purpose.” Do you believe that the release of Francois Holloway served a “corrections or public safety purpose”? If so, please explain your answer.

RESPONSE: I believe that under the unique circumstances of Mr. Holloway’s case, the Court had the authority to reconsider the sentence originally imposed. Of course, the decision as to whether or not to reduce Mr. Holloway’s sentence rested within the sole discretion of the Court. Ultimately, the Court determined, based on the circumstances of the offense, the punishment imposed on others involved in the same conduct, Mr. Holloway’s behavior during his twenty years of incarceration, and other factors, that a reduction in sentence was appropriate.

17. If confirmed as Attorney General, will you review the sentences of violent offenders and consent to early release if such release would, in your judgment, serve a “corrections or public safety purpose”?

RESPONSE: If confirmed as Attorney General, I will follow and abide by all corrections laws, including those concerning the confinement of federal prisoners. I will, for example, implement congressionally enacted good behavior laws that provide prison credits for most federal offenders who do not commit misconduct during their imprisonment terms.

18. In response to QFR #14f, you wrote that “I recognize that some reforms of existing mandatory minimum sentencing statutes are needed.” Please explain with specificity the nature of the reforms you state is necessary, citing relevant provisions of Title 18. Please state also whether you believe that the consecutive mandatory minimum provisions under 18 U.S.C. § 924 require reform and/or elimination.

RESPONSE: I agree with congressional policy, as embodied in the Sentencing Reform Act and subsequent legislation, that federal sentencing statutes should be reviewed periodically to determine whether the minimum and maximum penalties contained in those statutes should be modified. Because I have not studied data regarding the application of the many dozens of federal mandatory minimum sentencing statutes, I cannot at this time specify the particular reforms that may be needed. However, I can say that the Administration has indicated its support for the Smarter Sentencing Act, which would modify some mandatory minimum sentencing statutes, and I support some changes to the existing mandatory minimum structure for federal drug offenses. As to the mandatory minimum sentencing provisions contained in 18 U.S.C. § 924, I believe that strong penalties for those who use or possess weapons in the commission of violent and drug trafficking crimes, including mandatory minimum sentences, are important. At the same time, in certain circumstances, requiring 25-year consecutive sentences for successive instances that a weapon is possessed in connection with qualifying crimes can lead to exceedingly long sentences. I look forward to working with Congress to determine if any calibrations to the mandatory sentencing provisions for this offense might be appropriate.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR SCHUMER

- 1) My home state of New York has faced an exponential increase in abuse of opioids, particularly heroin, over the last several years. What are some of the steps you will take as Attorney General to combat this burgeoning epidemic?

RESPONSE: As a United States Attorney, I have seen the horrible damage done to families and communities by opioids. I know that the Department of Justice has worked closely with federal, state, and local partners to fight this growing epidemic through a mix of enforcement and treatment efforts. With respect to enforcement, DEA, the United States Attorneys' Offices, and the Criminal Division proactively investigate supply chains to prevent controlled substances from reaching the hands of non-medical users and to bring to justice traffickers who seek to profit from addiction. In addition, the following are vital components of a comprehensive approach to the heroin and prescription painkiller epidemic: to ensure prevention through education, early intervention, and expanded treatment options; to explore alternatives to incarceration; and to provide reentry programs focused on treatment and prevention of relapse. I know the Department has encouraged law enforcement agencies and first responders to train and equip their personnel with the overdose-reversal drug known as Naloxone, which can save lives, and that the Department has created an online tool kit to assist these efforts. If I am confirmed as Attorney General, I would expect the Department to continue all of these efforts.

- 2) I was glad to see that the President has requested an increase to the Community Oriented Policing Services Programs in his recent budget proposal. The funding provided by the COPS program ensures that local law enforcement agencies have the resources they need to keep our communities safe. Will you continue to support programs such as COPS and the Byrne JAG program as Attorney General?

RESPONSE: The COPS program is critical in funding the hiring of community policing professionals, and offering training, technical assistance and information resources to law enforcement, community members, and local government leaders. Likewise, the Byrne JAG program provides states, tribes, and local governments with the funding necessary to support law enforcement in a variety of ways. I understand that funding for COPS and the JAG program has been a priority for the Department under Attorney General Holder, and I would continue that commitment if I am confirmed as Attorney General.

- 3) In 2012, Congress gave the Attorney General broad authority to use emergency scheduling powers for dangerous synthetic narcotics compounds that are often marketed to young adults. These compounds, labeled by titles such as "K2" or "Spice" pose a serious threat to our citizens. I have asked that the Drug Enforcement Administration work with the

Department of Justice and the Attorney General to more quickly identify these compounds as they develop; as Attorney General, will you make this a priority in your work with the DEA?

RESPONSE: I share your concern regarding synthetic drugs, which are highly dangerous, do not have known legitimate medical uses, and are not approved by the FDA. They pose a great danger to the public, especially children and teenagers. I understand that the DEA has been carefully monitoring the emergence of new synthetic drugs, and employs a broad range of measures to combat their use, including investigation and prosecution, administrative scheduling, and education and training for law enforcement, health professionals, and communities. If confirmed as Attorney General, I will support these important efforts.

- 4) Over the last several years I have advocated that federal law enforcement aggressively work to disable websites on the “dark web” that have assisted in the illegal sale of controlled substances, guns, and other dangerous contraband. “Silk Road” and “Silk Road 2.0” have been successfully taken down through the excellent work of the FBI, but more must be done as other sites emerge in their place. This is one of many reasons why I believe that it is important to increase the Department’s efforts in cybercrime prevention. As Attorney General, how do you think the Department can improve in this area?

RESPONSE: If confirmed as Attorney General, I will embrace the Department's responsibility to protect Americans' privacy and security on-line, just as I have as the United States Attorney for the Eastern District of New York. I know that the Department is already working hard to address the wide variety of threats on the Internet, from child exploitation to large scale data breaches to terrorism. As a United States Attorney I saw firsthand the challenges involved in such cases. But I also saw how the Department rises to meet such challenges in complex international cybercrime cases like the \$45 million ATM cyber heist my office prosecuted.

As you recognize, the Department must be proactive and strive to prevent cybercrime and cyber-enabled crime to the greatest extent possible. The Department has already instilled this mission throughout the United States Attorneys' Offices, each of which has assigned specialized prosecutors to participate in the Computer Hacking and Intellectual Property network and the National Security Cyber Specialists network. And many Offices, such as the Eastern District of New York, have created specialized units dedicated to combating criminal and national security threats in cyberspace. I am also encouraged that the Department is engaging with the rest of the federal government and with private industry to conduct valuable outreach and to implement broad cybercrime prevention strategies through entities like the Cybersecurity Unit in the Computer Crime and Intellectual Property Section of the Criminal Division. If confirmed as Attorney General, I will support and build on these efforts.

With regard to the “dark web” in particular, I will work to continue the progress that is already being made by the Department. As you know, a defendant was just convicted in the Southern District of New York for crimes relating to the operation of the Silk Road site, and another defendant is awaiting trial for his role in that site’s successor, Silk Road 2.0. Beyond those particularly infamous sites, I know that the Department recently coordinated with law enforcement in 16 other countries to take down dozens of illegal online marketplaces operating

as hidden sites on the Tor network. I believe that this type of technical innovation and international cooperation will be increasingly important as we face more sophisticated and more global threats. Successes like these should deter criminals who wrongfully believe that they are beyond justice on such dark markets. We must continue to pursue and disrupt the criminal activities of those who are not deterred.

Continued improvement in this area will require collaboration with Congress. There is no question that law enforcement's job protecting us online is getting bigger and it is getting more difficult. I look forward to working with Congress to ensure that law enforcement has the resources and the tools it needs to protect our country and its people online.

- 5) In late 2013, Avonte Oquendo, a child with Autism Spectrum Disorder (ASD) went missing from his school in Brooklyn, and, tragically, was found deceased after a city-wide search over several months. With the help of Attorney General Holder, I worked to expand the acceptable uses for Byrne JAG grants to include programs for voluntary autism tracking devices ran by local law enforcement. Should you be confirmed as Attorney General, will you help me continue to promote this application of JAG funds? Will you commit to continue the Department's efforts to find ways to address the issue of "wandering" in children with ASD?

RESPONSE: I am grateful for your leadership on this issue, and am sadly familiar with the tragic disappearance and death of Avonte Oquendo as it occurred in my hometown, Brooklyn. As a United States Attorney, I have not closely studied the grant funding issue, but I understand that the Department has determined that state and local recipients of funding through the Edward Byrne Memorial Justice Assistance Grant Program may use their funds to purchase transmitter bracelets to assist with locating missing children with ASD as part of a law enforcement program. If confirmed as Attorney General, I would look forward to working with you to protect children who have ASD.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR SESSIONS

1. Do you believe that President Obama has exceeded his executive authority in any way? If so, how?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not been charged with determining when and whether the President has exceeded his executive authority.

2. On August 6, 2014, just a few months before President Obama announced his executive amnesty, he said: "I think that I never have a green light [to push the limits of executive power]. I'm bound by the Constitution; I'm bound by separation of powers. There are some things we can't do. Congress has the power of the purse, for example... Congress has to pass a budget and authorize spending. So I don't have a green light."

Do you agree with that statement?

RESPONSE: I agree that the President is bound by the Constitution and that the Constitution vests Congress with the power of the purse.

3. Do you agree that Congress has a duty not to fund programs that are unconstitutional?

RESPONSE: I agree that Congress, like the Executive Branch, should act within the constraints of the Constitution.

4. Do you agree that Congress has the power to fund programs it agrees with, and not to fund programs it disagrees with or considers to be unlawful?

RESPONSE: I agree that Congress has power over appropriations, which should be exercised consistent with the constraints of the Constitution.

5. On January 20, 2014, it was reported that two Yemeni nationals, Sadiq al-Abbadi and Ali Alvi, members of al Qaeda, had been charged with conspiracy to murder U.S. nationals abroad and providing material support to al Qaeda, and will be tried in United States federal court in your district, the Eastern District of New York. Both men fought against U.S. military forces on multiple occasions, and Al-Abbadi allegedly led an attack against U.S. forces in Afghanistan during which a U.S. Army Ranger was killed and several others were seriously wounded. On January 23, 2014, it was reported that Faruq Khalil Muhammad 'Isa, accused of orchestrating an attack that killed five U.S. soldiers in

Iraq, will also be tried in the Eastern District of New York. It is undisputed that these individuals are foreign terrorists, captured abroad while engaged in armed conflict against U.S. forces. Do you agree that these individuals are unlawful enemy combatants and, as such, could be tried before a military commission and detained for the duration of hostilities under the law of war?

RESPONSE: I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In any particular case, representatives of the agencies who are tasked with protecting the American people, including the Department of Defense, the Department of Homeland Security, the Department of Justice and agencies in the Intelligence Community, work together to determine the most effective tools to apply in that case, based on the particular facts and applicable law. As the United States Attorney for the Eastern District of New York, my role to date has been limited to determining whether or not there was a prosecutable federal case, not which was the appropriate tool to employ.

Because the cases to which you refer are ongoing prosecutions, I cannot comment on the specific facts or decision-making processes in those matters, other than to indicate that the process described above was observed.

6. If an individual is charged with violations of the laws of war and appears to be an active and committed member of al Qaeda or another terrorist organization that has threatened the United States or its allies, would you support the detention of that individual as a prisoner of war so long as al Qaeda or that terrorist organization continues to threaten acts of war or terrorism against the United States or its allies?

RESPONSE: If confirmed as Attorney General, I would support using all lawful tools of national power to protect the nation from terrorism. It is my understanding that detention of enemy combatants, consistent with the 2001 AUMF as informed by the law of war, is among the lawful options available to the government, depending on the facts and circumstances.

7. Does the president have the power to detain terrorism suspects without trial in the United States? If so, for how long?

RESPONSE: It is lawful for the United States to detain enemy combatants without criminal charges or trial for the duration of the conflict, consistent with the 2001 AUMF as informed by the law of war. The location of a particular detention facility would not alter the government's detention authority, although the laws of war would inform in what circumstances such individuals could be detained.

8. Do you agree that, under the laws of war and controlling case law, the United States military has the ability to detain enemy combatants until the end of hostilities without bringing charges?

RESPONSE: Although I have not had occasion to address this question in my role as a United States Attorney, based on my general understanding of the law of war and applicable Supreme Court precedent, the United States military would, under appropriate circumstances, have the authority to detain an enemy combatant until the end of hostilities without bringing charges.

9. Do you agree that in the civilian justice system, defendants are required to be told they have the right to remain silent and that interrogation must stop if they invoke that right, and that there is no such requirement in the military system for enemy combatants?

RESPONSE: My understanding is that FBI policy makes clear that the first priority for interrogation of terrorists is to gather intelligence. In the civilian justice system, the Miranda rule generally requires that, for statements to be admissible in court, an individual must be advised of his or her right to remain silent and the right to have counsel present during a custodial interrogation. However, the Miranda warning would not be required for interrogations that are solely for the purposes of intelligence collection and will not be used in a criminal prosecution. There is also a public safety exception as articulated by the Supreme Court in *New York v. Quarles*, under which public safety-focused questions may be admissible at trial even if Miranda warnings are not provided. The government uses that exception to the fullest extent possible to gather intelligence and identify imminent threats. I believe that our first priority should be to exhaust all appropriate avenues of inquiry to identify imminent threats posed by terrorists who are arrested or detained, or by others with whom they may be working, but we can do so while preserving prosecution options. Although I have not had the occasion as a United States Attorney to examine the requirements under the military commission system, if confirmed as Attorney General, I would support using all lawful tools of national power, including the military commission system, to protect the nation from terrorism.

10. Do you agree that in the civilian justice system, when a suspect is interrogated, he has a right to counsel, the interrogator must tell him of that right, and the interview must cease until a lawyer arrives if the request is made, and that there is no corresponding right in the military system for enemy combatants?

RESPONSE: As indicated above, my understanding is that FBI policy makes clear that the first priority for interrogation of terrorists is to gather intelligence. In the civilian justice system, the Miranda rule generally requires that, for statements to be admissible in court, an individual must be advised of his or her right to remain silent and the right to have counsel present during a custodial interrogation. However, the Miranda warning would not be required for interrogations that are solely for the purposes of intelligence collection and will not be used in a criminal prosecution. There is also a public safety exception as articulated by the Supreme Court in *New York v. Quarles*, under which public safety-focused questions may be admissible at trial even if Miranda warnings are not provided. The government uses that exception to the fullest extent possible to gather intelligence and identify imminent threats. I believe that our first priority should be to exhaust all appropriate avenues of inquiry to identify imminent threats posed by terrorists who are arrested or detained, or by others with whom they may be working, but we can do so while preserving prosecution options.

11. Do you agree that in the civilian justice system, an individual must be brought promptly before a judge and be charged with a crime or released (formerly known as the “48-hour rule”), and that there is no such requirement in the military system for enemy combatants?

RESPONSE: Federal Rule of Criminal Procedure 5 requires that upon arrest either within or outside the United States, a federal law enforcement officer must promptly bring an arrestee before a magistrate judge “without unnecessary delay,” although an individual may voluntarily waive this requirement, as has occurred with some frequency in terrorism cases. I have not had the occasion as a United States Attorney to examine the requirements under the military commission system, but, if confirmed as Attorney General, I would support using all lawful tools of national power, including the military commission system, to protect the nation from terrorism.

12. Do you agree that, in the civilian justice system, the Speedy Trial Act sets strict guidelines on how long after arrest a prosecutor has to present a case to a grand jury, and that there is no similar timeline by which the military must charge an enemy combatant who is detained during wartime?

RESPONSE: The Speedy Trial Act imposes a number of time limits within which a defendant must be indicted and brought to trial, although these may be suspended for good cause or by waiver of a defendant. I have not had the occasion as a United States Attorney to examine the requirements under the military commission system, but, if confirmed as Attorney General, I would support using all lawful tools of national power, including the military commission system, to protect the nation from terrorism.

13. In May 2011, in a speech before the American Association of Professional Law Enforcement, you stated:

“Military commissions have been strengthened, and whether you agree or disagree with [the] Congressional action that restricted Guantanamo Bay detainees to military commissions, the fact is there is no longer the presumption that terrorism cases will automatically be tried in federal court.”

In 2009, President Obama signed legislation passed by a Democratic-controlled Congress strengthening the Military Commissions Act of 2006. While you have acknowledged that military commissions have been strengthened, you appear to be continuing to operate under the presumption that foreign terrorists captured abroad should be brought into the United States and put in a civilian judicial system. If confirmed, will you continue Attorney General Holder’s policy that there is a presumption that foreign terrorists should be tried in Article III courts?

RESPONSE: If confirmed as Attorney General, I would continue to support the approach of carefully evaluating all lawful options in the fight against terrorism, including both federal courts and military commissions in appropriate cases. The decision of whether and, if so, in what

forum to try a terrorist, must be based on the specific facts of a case and an evaluation of which options are available and in the best interests of our national security. I can attest, based on my firsthand experience as a United States Attorney, to the effectiveness of our criminal justice system as one of the tools in the fight against terrorism. Our criminal justice system has proven in hundreds of terrorism cases, since before 9/11, to be a swift, secure, and effective option, among others, to gather valuable intelligence, incapacitate terrorists, and ensure justice is served.

14. Do you believe that it should be the policy of the United States to negotiate with terrorists?

RESPONSE: It is my understanding that it is the policy of the United States not to grant concessions to terrorists. If confirmed as Attorney General, I would support that policy.

15. If confirmed, will you advise the president to keep in place the United States' longstanding policy of not negotiating with terrorists?

RESPONSE: As indicated above, it is my understanding that it is the policy of the United States not to grant concessions to terrorists. If confirmed as Attorney General, I would support that policy.

16. Do you support a permanent extension of the intelligence-gathering authorities under the Foreign Intelligence Surveillance Act (50 U.S.C. § 1805(c)(2)(B), 50 U.S.C. §§ 1861-2, and 50 U.S.C. § 1801(b)(1)(c)), which are set to expire on June 1, 2015?

RESPONSE: Although I have not had the occasion to consider these particular provisions of the Foreign Intelligence Surveillance Act (FISA) as a United States Attorney, I believe that it is important that our intelligence and law enforcement professionals have the full panoply of tools to deal with evolving national security threats like international terrorism, while ensuring that we use those tools in a way that effectively protects privacy and civil liberties. As I mentioned during the hearing, as a prosecutor, I am quite familiar with the invaluable benefits provided by roving wiretaps in narcotics prosecutions; those wiretaps are critical to conducting electronic surveillance against those attempting to evade it and are only issued after judicial review.

I understand that the Administration supported the USA FREEDOM Act, which would have extended these three provisions of FISA while also providing additional privacy protections, including prohibiting bulk collection under Section 215. If confirmed as Attorney General, I look forward to working with this Committee, as well as the Intelligence committees, on legislation to counter serious national security threats in a manner that also protects the privacy and civil liberties of our citizens.

17. During your hearing, you were asked a number of legal questions to which you demurred on the grounds that you needed more information, had not studied the issue, or were not sufficiently familiar with the “legal framework” governing a particular question. But when asked by the Ranking Member, you testified without hesitation that “waterboarding is torture . . . and thus illegal.” Please take this opportunity to explain the basis for your conclusion, including what steps you took prior to your testimony to form a reasoned opinion, and why you were more familiar with this area of the law than the subjects on which you declined to answer.

RESPONSE: I was able to answer this question more definitively because I was already familiar with the issue based on the extended public debate it received. My answer was based on my understanding of waterboarding and the extreme trauma it causes, which would fall within any ordinary understanding of “torture.”

18. Section 8 of the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (Oct. 17, 2006), provides protection from prosecution for U.S. personnel involved in certain detentions and interrogations of enemy combatants occurring between September 11, 2001, and December 30, 2005. Please explain your understanding of the scope of this immunity.

RESPONSE: I have not had occasion to address that statute in my role as a United States Attorney, but I have reviewed the statute and believe that it describes in plain terms the scope of immunity.

19. Did you participate in the drafting of or provide input for the October 28, 2014 Executive Office for United States Attorneys’ policy memo directing that U.S. Attorneys should pursue only the most egregious marijuana offenses on Indian reservations that are growing and selling marijuana, even if those reservations are located within states where marijuana is illegal under state (and federal) law? If so, what was the scope and substance of your participation and/or input?

RESPONSE: The Attorney General’s Advisory Committee, which I chaired, provided input on the development of guidance on marijuana issues in Indian Country. That guidance makes clear that the same enforcement priorities and prosecutorial considerations that guide prosecutorial decisions in every state also apply in Indian Country. Further, the guidance emphasizes that United States Attorneys should consult with tribes individually to discuss individual tribe circumstances with regard to marijuana enforcement as they do with other issues involving federal law enforcement in Indian Country.

20. If confirmed, what actions would you direct a U.S. Attorney to take if an Indian reservation, located in a state where marijuana use is illegal under state law, legalized marijuana?

RESPONSE: Because each case presents different facts and legal questions, I am not in a position to comment on the hypothetical scenario raised in your question. However, as a general matter, if I am confirmed as Attorney General, consistent with the Department's existing guidance, I would expect each United States Attorney to assess the threats and circumstances in his or her district, and to consult closely with tribal partners and the Justice Department when significant issues or enforcement decisions arise in this area.

21. If confirmed, what actions would you direct a U.S. Attorney to take if an Indian reservation, located in a state where marijuana use is legal under state law, criminalized marijuana?

RESPONSE: Because every circumstance is different, I am not in a position to comment on the hypothetical scenario raised in your question. However, as a general matter, if I am confirmed as Attorney General, consistent with the Department's existing guidance, I would expect each United States Attorney to assess the threats and circumstances in his or her district, and to consult closely with tribal partners and the Justice Department when significant issues or enforcement decisions arise in this area.

22. In his August 2013 memo to U.S. Attorneys, Deputy Attorney General Cole announced the Justice Department would essentially cease prosecutions in states that had legalized marijuana, as long as those states have "strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests." As Chairwoman of the Attorney General's Advisory Committee, were you involved in drafting that memo? If so, please explain your involvement, including what you advised the Attorney General with regard to the policies set forth in the memo.

RESPONSE: I was not involved in the drafting of the August 2013 memorandum.

23. Attorney General Holder has advocated for reducing mandatory minimum sentences for drug trafficking, and has endorsed legislation that would reduce by at least half the mandatory minimum sentences for trafficking in heroin, methamphetamine, cocaine, LSD, PCP, marijuana, and other opiates. A number of law enforcement groups, including the National Association of Assistant U.S. Attorneys (NAAUSA), the Federal Law Enforcement Officers Association, and the National Narcotic Officers' Associations' Coalition opposed that legislation. It was also reported that several other groups, including the Fraternal Order of Police, the National Sheriffs' Association, the International Association of Chiefs of Police, the National Association of Police Organizations, the Major County Sheriffs' Association and the National District Attorneys Association were very concerned that cutting mandatory minimums in half will

severely impact their ability to secure a defendant's cooperation in indicting the "bigger fish" in a drug conspiracy. In a January 31, 2014 letter to this Committee, NAAUSA – which represents the interests of the 5,400 Assistant U.S. Attorneys nationwide – wrote:

"Mandatory minimums serve as an indispensable tool in enabling law enforcement and prosecutors to secure offender cooperation and dismantle criminal organizations. The current system of mandatory minimum penalties is the cornerstone in the ability of Assistant United States Attorneys and federal law enforcement agents to infiltrate and dismantle large-scale drug trafficking organizations and to take violent armed career criminals off the streets. Mandatory minimums deter crime and help gain the cooperation of defendants in lower-level roles in criminal organizations to pursue higher-level targets. They have been demonstrably helpful in reducing crime. Time and again, Assistant United States Attorneys have solved crimes and secured justice through the deterrent power of mandatory minimum sentences."

a. Do you agree with NAAUSA's statement?

RESPONSE: I believe that mandatory minimum sentencing statutes are among our many important tools that promote the goals of sentencing and public safety. At the same time, the Department's Smart on Crime initiative helps ensure that sentencing laws are used in a sensible and effective way that is proportional to the crime, while also holding offenders accountable and prioritizing our limited resources.

b. Do you agree that drug trafficking is a serious offense that is deserving of equally serious mandatory minimums in order to deter such behavior?

RESPONSE: As I noted in my testimony before the Committee, with respect to the enforcement of the narcotics laws that contain mandatory minimums—laws which I have had occasion to use on numerous occasions as a career prosecutor and United States Attorney—those laws are being followed not just by my Office but throughout the United States Attorney community. Every United States Attorney's Office retains and exercises the discretion to seek a mandatory minimum sentence. We also look at the nature of the crime and narcotics problems in our particular districts to determine whether a mandatory minimum sentence would be appropriate under the particular facts of each case.

24. As a United States Attorney, what types of drug offenders have been your priority targets?

RESPONSE: As noted above, as an Assistant United States Attorney, a career prosecutor, and as the United States Attorney for the Eastern District of New York, I have used narcotics laws on numerous occasions. In the Eastern District of New York, we rely heavily on the mandatory minimums statutes when dealing with the worst of the worst—drug kingpins, against whom we have built significant trafficking cases, many of whom have been extradited from foreign countries or have been operating within our district.

25. If a member of a drug trafficking ring is apprehended while in possession of such a substantial amount of drugs so as to trigger a mandatory minimum sentence, and the individual cooperates, it is very common for the prosecutor to file a motion for “substantial assistance,” which means that person will not receive a mandatory minimum even though they were carrying enough drugs to trigger the mandatory minimum. How often would you estimate this occurs in your office?

RESPONSE: As a general matter, prosecutors look at all facts and evidence, as well as a defendant’s cooperation, in making charging and sentencing decisions for a particular defendant. Because every case presents its own unique set of facts that would bear on the decision regarding appropriate sentencing, I am not able to estimate how often Assistant United States Attorneys in the Eastern District of New York decide whether or not to pursue a mandatory minimum sentence in narcotics cases.

26. Congress’s purpose in creating sentencing guidelines was to ensure that the sentence a defendant received for a particular crime did not depend on the judge he or she happens to draw – a reality that has been characterized as “luck of the draw.” Under the Supreme Court’s decision in *United States v. Booker*, however, the federal sentencing guidelines are now advisory, rather than mandatory. Now that judges are no longer required to follow the guidelines, we are seeing the very disparities, including racial disparities, in sentences that Congress sought to correct. According to a 2012 report from the United States Sentencing Commission, “unwarranted disparities in federal sentencing appear to be increasing.” If confirmed, will you commit to work with Congress to ensure that federal courts take sentencing guidelines into account in every case to avoid unwarranted sentencing disparities?

RESPONSE: Yes. One of the important goals of the Sentencing Reform Act is to reduce unwarranted disparities in federal sentencing. I share that goal and look forward to working with the Sentencing Commission and with Congress to better meet that goal.

27. The Supreme Court in *United States v. Rita* held that appellate courts may regard properly calculated within-guidelines sentences as presumptively reasonable. In view of this holding, do you believe it would improve compliance with the guidelines – and thereby reduce disparities – to adopt an appellate standard in line with the *Rita* decision? If you disagree, please cite the basis for your view.

RESPONSE: Whether or not a presumption of reasonableness standard of review would improve compliance with the guidelines is an empirical question that the Sentencing Commission began examining in its most recent *Booker* report. The Commission found that in fiscal year 2011, “the presumption of reasonableness did not appear to outweigh” other factors that influenced the rate of affirmances of sentencing appeals. The Commission found that “there was no consistent pattern among the circuits based on whether or not they chose to apply the presumption of reasonableness. The circuit with the highest affirmance rate in fiscal year 2011, the First Circuit, does *not* apply the presumption, whereas the circuit with the next-highest

affirmance rate, the Seventh Circuit, does apply the presumption. At the other end of the spectrum, the two circuits with the lowest affirmance rates, the Fourth and Tenth Circuits, *do* apply the presumption.” See U.S. Sentencing Commission, Report on the Continuing Impact of *United States v. Booker* on Federal Sentencing, Part B (2012). This suggests that adopting a presumption of reasonableness standard of review may not significantly impact appellate review of sentences and therefore may not improve guideline compliance. I look forward to working with the Sentencing Commission and with Congress to further exploring this issue in the coming years.

28. As United States Attorney, you must have been contacted about the possibility of clemency in cases handled by your office. Did you ever endorse any of these suggestions (*i.e.*, did you ever agree that clemency was warranted in any case your office prosecuted)? If yes, please provide examples. If no, please explain why not.

RESPONSE: As the United States Attorney for the Eastern District of New York, I have been contacted by the Office of the Pardon Attorney in regard to petitions for clemency in cases that had been prosecuted by the Eastern District of New York. As you know, the Constitution gives the President the exclusive authority to grant or deny clemency petitions. That authority has never been delegated to any person or agency. Presidents, however, have sought and continue to seek advice from the Department of Justice on the exercise of their authority. The Department’s advice on a particular petition might incorporate the views of the United States Attorney’s Office from the district of conviction. Because the Department’s communications to the White House on these matters constitute advice concerning the President’s exercise of a constitutionally committed authority, the advice is privileged and confidential.

29. Do you agree that robust enforcement of existing criminal laws deters the use of a gun during a criminal act?

RESPONSE: As a United States Attorney, protecting the public from violent crime has been among my top priorities. The primary tool at my disposal in doing so has been the robust enforcement of laws that punish violent criminals and deter others from committing violent acts.

30. Do you agree that before enacting new laws that restrict the constitutional rights of law-abiding citizens, we should enforce the laws already in place that apply to criminals?

RESPONSE: As a United States Attorney, I have been committed to enforcing the law and protecting the rights of law-abiding citizens. If confirmed as Attorney General, I would work with Congress to ensure that any legislative proposals focused on federal criminal law are consistent with the United States Constitution and respectful of the rights of its citizens.

31. If confirmed, will you commit to enforce existing criminal laws and not to seek new authorities that limit the rights of law-abiding Americans?

RESPONSE: As indicated above, throughout my prosecutorial career, I have been committed to enforcing the law and protecting the rights of law-abiding citizens. If confirmed as Attorney General, I would work with Congress to ensure that any legislative proposals focused on federal criminal law are consistent with the United States Constitution and respectful of the rights of its citizens.

32. In April 2013, the Senate rejected measures that would have instituted a ban on so-called “assault weapons” and large capacity magazines, required universal background checks, and created new unnecessarily high criminal penalties for firearm offenses. In October 2014, Attorney General Holder referred to these as “really reasonable gun safety measures.”

Do you agree with Attorney General Holder’s statement?

RESPONSE: As a United States Attorney, one of my highest priorities has been to protect Americans from violent crime, including violent gun crime. I understand that the Administration supports passage of legislation that would strengthen and enhance the now-sunsetted 1994 Public Safety and Recreational Firearms Use Protection Act. If confirmed, I look forward to working with Congress on any appropriate legislation toward that end.

33. Do you personally favor allowing concealed carry permits for law-abiding citizens?

RESPONSE: As a United States Attorney, I believe that principles of federalism counsel respect for the role of the states to control who may carry concealed firearms and in what circumstances within their borders, consistent with the Constitution.

34. Do you acknowledge that as head of the Justice Department the Attorney General has the responsibility to ensure that federal immigration laws are enforced?

RESPONSE: Yes. The Attorney General, together with the Secretary of Homeland Security, is responsible for ensuring that federal immigration laws are enforced.

35. According to U.S. Immigration and Customs Enforcement’s FY2014 Enforcement and Removal Operations Report, ICE’s efforts in removing convicted criminal aliens have been adversely impacted by “an increasing number of state and local jurisdictions that are declining to honor ICE detainers,” resulting in the release of criminal aliens into the community. The report states that since January 2014, state and local law enforcement agencies have refused to honor 10,182 detainers. It is my understanding that through September 2014, the recidivism rate for this group was a stunning 25 percent, including 5,425 subsequent arrests and 9,316 criminal charges. It is also my understanding that litigation by individuals and advocacy groups are a major factor in this non-cooperation. If confirmed, will you commit to devote Justice Department resources to put a stop to this dangerous practice?

RESPONSE: I support efforts to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. If confirmed as Attorney General, I will continue the Department's efforts to work closely with the Department of Homeland Security and state and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws.

36. Pursuant to the Prison Rape Elimination Act (PREA), the Justice Department routinely withholds grants to state and local jurisdictions for noncompliance. If confirmed, would you support withholding State Criminal Alien Assistance Program (SCAAP) grants to jurisdictions that refuse to honor ICE detainees?

RESPONSE: I understand that while the Prison Rape Elimination Act provides that certain grant funds will be withheld from states that are noncompliant, a similar statutory penalty is not present in the State Criminal Alien Assistance Program (SCAAP). If confirmed as Attorney General, I will work closely with leadership of the Bureau of Justice Assistance, which administers SCAAP, and my colleagues at the Department of Homeland Security to examine ways to improve SCAAP.

37. Do you agree that the decision to release criminal aliens in general poses an unnecessary and unreasonable risk to the public safety?

RESPONSE: It is my understanding that Immigration and Customs Enforcement (ICE) administers the immigration detention system and is responsible for determining whether to release particular aliens from its custody. I respectfully refer questions regarding ICE's exercise of its authorities to ICE. It is my view as a prosecutor, however, that any custodial decisions must be made within the confines of the law, determined on a case-by-case basis, and account for any risks to public safety.

38. Do you support a role for state and local law enforcement, consistent with federal law, in enforcing federal immigration laws? Please explain your answer.

RESPONSE: I am committed to public safety in the enforcement of federal immigration laws and to working with federal and state law enforcement partners in continuing efforts to secure our borders and protect our national security.

39. The 287(g) program, which trains local law enforcement to determine whether an individual is lawfully present, has been extremely successful. The website for U.S. Immigration and Customs Enforcement (ICE) once touted the program's success: "Since January 2006, the 287(g) program is credited with identifying more than 304,678 potentially removable aliens – mostly at local jails. ICE has trained and certified more than 1,300 state and local officers to enforce immigration law." In a statement last

October, an ICE spokesperson said the 287(g) program “acts as a force multiplier for the agency and enhances public safety in participating jurisdictions by identifying potentially dangerous criminal aliens and ensuring they are removed from the United States and not released back into our communities.” Nevertheless, the Obama administration has systematically dismantled the program, cancelling agreements with local law enforcement and slashing funding for the program, largely because amnesty advocates oppose the program. If confirmed, will you commit to working with Congress to rebuild the 287(g) program, and devote the necessary Justice Department resources to the program?

RESPONSE: In my position as the United States Attorney for the Eastern District of New York, I have had no role in addressing ICE’s implementation of the 287(g) program. I look forward to learning more about the 287(g) program and other ICE programs directed at public safety, if I am confirmed as Attorney General.

40. If confirmed, will you commit to reinstating Operation Streamline prosecutions and ensure that the Justice Department has or requests the resources necessary to expand the program across the entire southwest border?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not stood in the shoes of the Southwestern Border United States Attorneys as they have set their priorities. While I have great confidence in those United States Attorneys, if confirmed as Attorney General, I will personally take a close look at the policies governing prosecution of illegal border crossers to ensure that those policies are best protecting the security of the United States and its citizens.

41. Is accurately reporting one’s income and properly filing one’s income tax return an obligation shared by everyone in this country? If so, do you agree that someone who fails to do so lacks “good moral character” as required under the various provisions in the Immigration and Nationality Act? If not, please explain why not.

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had the opportunity to study the question of what constitutes “good moral character” for purposes of the Immigration and Nationality Act, though I agree that filing tax returns is an obligation shared by all who are required to file them.

42. To my knowledge, the Office of Legal Counsel opinion regarding the president’s executive action on immigration does not identify any statutory authority for the provision of Employment Authorization Documents to the majority of the individuals eligible for either the Deferred Action for Childhood Arrivals or the Deferred Action for Parents of Americans and Lawful Permanent Residents programs. Please identify the legal authority for the provision of Employment Authorization Documents to these individuals. If you find that such authority does not exist, will you ask the Office of Legal Counsel to revise its opinion?

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

43. If confirmed, will you commit to conducting a thorough review of pending cases within the Executive Office for Immigration Review (EOIR) – the Immigration Courts and the Board of Immigration Appeals – to identify the source of the backlog in the system, and to providing the results of that review to this Committee within 60 days?

RESPONSE: Although I am not familiar with the specifics of EOIR's case load and its adjudication rates, I understand that its case load has continued to increase over the past few years. I understand, too, that Congress has appropriated funds to hire more immigration judges and agency staff to address the increasing case load and the added demands of the recent influx of people across the southwest border. If confirmed as Attorney General, I will work with Congress to ensure that EOIR has the resources necessary to fairly and efficiently adjudicate the cases that come before it, and that EOIR appropriately uses those funds to administer its case load as efficiently and fairly as possible.

44. It is my understanding that EOIR has provided members of the Board of Immigration Appeals with an extremely generous, and perhaps questionable, teleworking program. If confirmed, will you provide a description of this policy to the Committee within 60 days?

RESPONSE: I have not had the opportunity to study policies implemented in other parts of the Department and am not familiar with the Board of Immigration Appeals' telework policy in particular. If confirmed as Attorney General, I commit to learning more about this issue with your concerns in mind.

45. Last year, the Board of Immigration Appeals issued a published decision in the *Matter of Chairez*, 26 I&N Dec. 349 (2014), which held that the United States Supreme Court's decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013), applies to the analysis of criminal convictions in immigration proceedings. *Descamps*, and its predecessor cases (*Taylor v. United States*, 495 U.S. 575 (1990); *Shepard v. United States*, 544 U.S. 13 (2005)), arose out of concerns regarding the Sixth Amendment in the criminal sentencing context. Do you agree with the Board's decision? If so, why should a strict, technical analysis, which can only benefit aliens with serious criminal convictions, be applied to civil immigration proceedings, where the Sixth Amendment does not apply? Is the safety of our communities more important, or the ability of a criminal alien to remain in this country?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not been involved in any matters pending before the Board of Immigration Appeals, and I have not

had the opportunity to review the Board's decision in *Matter of Chiarez*. If confirmed as Attorney General, I look forward to learning more about these important issues.

46. 8 U.S.C. §1229a clearly states that an alien has the right of being represented – at no expense to the government – in removal proceedings. The Board of Immigration Appeals has a “*Pro Bono Project*,” in which it secures counsel for previously unrepresented aliens in cases on appeal with the Board.
- a. Do you believe that this program complies with federal law?
 - b. If confirmed, will you direct the Board to stop using taxpayer resources to find counsel for aliens and eliminate this program?

RESPONSE: The government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If confirmed as Attorney General, I look forward to learning more about this important issue.

47. The Department of Justice has provided federal funds for an AmeriCorps program to provide attorneys to aliens in immigration proceedings.
- a. Do you believe that this program complies with federal law?
 - b. If confirmed, will you cease using taxpayer resources to provide attorneys for aliens in immigration proceedings and eliminate the program?

RESPONSE: The government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If confirmed as Attorney General, I look forward to learning more about this important issue.

48. In the 2001 case *Zadydas v. Davis*, the Supreme Court held that the government can detain an alien ordered removed for the initial 90 days allowed by 8 U.S.C. §1231(a)(2), and thereafter only for a period reasonably necessary to secure the alien's removal. It is presumptively reasonable for the government to detain the alien for six months or less, but after that time the government must show a significant likelihood of removal in the reasonably foreseeable future. Unfortunately, due to either the alien's actions or the alien home country's lack of “cooperation,” the government, even if acting diligently, often cannot repatriate the alien. This has resulted in the release of thousands of criminal aliens back into the general public, where they often re-offend, in many cases committing even more heinous crimes. Would you support legislation to fix the problems caused by this case?

RESPONSE: If confirmed as Attorney General, I would welcome the opportunity to work with you and any members of the Committee on legislation that would help to fix the problems in America's broken immigration system. This would include legislation that is both consistent

with constitutional limits and designed to address the issues created by *Zadvydas*, including protecting the public from terrorists and criminal aliens who pose a threat to public safety.

49. Similarly, in the 2013 case of *Rodriguez v. Robbins*, the U.S. Court of Appeals for the Ninth Circuit held that criminal and arriving aliens held in mandatory detention under 8 U.S.C. §§1226(c) and 1225(b), respectively, must be provided with a bond hearing after six months detention. In other words, the detention of criminal and arriving aliens is only mandatory for six months, after which the government is required to show that the aliens in custody are either a flight risk or a danger to public safety in order to continue detention. This is true regardless of the detainee's adjudication status. Like *Zadvydas*, this case could contribute to the release of dangerous criminal aliens back into communities. Would you support legislation to fix the problems caused by this case?

RESPONSE: If confirmed as Attorney General, I would welcome the opportunity to work with you and any members of the Committee on legislation that would help to fix the problems in America's broken immigration system. This would include any legislation designed to protect the public from terrorists and criminal aliens who pose a threat to public safety. As the United States Attorney for the Eastern District of New York, I know that my Office has taken the position that courts should respect Congress's statutory command that aliens subject to detention under the Immigration and Nationality Act remain in detention during the pendency of their removal proceedings. If confirmed as Attorney General, that position would not change.

50. 8 U.S.C. § 1228(a) states that the Attorney General "shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities" for certain criminal aliens. Conducting hearings in such a manner reduces the cost of future detention at taxpayer expense. Do you support the expansion of this program, and if so, how will you ensure its implementation by EOIR? Will you coordinate with the Department of Homeland Security to ensure that, where applicable, as many removal hearings as possible will be conducted in this manner?

RESPONSE: Although I am not familiar with the details of special removal proceedings at federal, state, and local correctional facilities, I am committed to supporting programs that minimize the cost of detention at taxpayer expense. If confirmed as Attorney General, I will work with the Department of Homeland Security and State and local agencies to achieve that important goal.

51. The 1940s regulation that created the "Fairness Doctrine" was held unconstitutional in a 1986 Federal Communications Commission decision. The following year, the Department of Justice advised the president to veto legislation that would have codified the doctrine in statute. Do you believe that the Fairness Doctrine is constitutional?

RESPONSE: I have not had occasion to encounter this issue in my role as a United States Attorney. If Congress is considering legislation that would codify the fairness doctrine, I would

welcome, if confirmed as Attorney General, the opportunity for the Department of Justice to evaluate the constitutionality of such legislation.

52. Please list which programs within the Justice Department, if any, you believe can be eliminated because they are ineffective, duplicative, unnecessary, or have outlived their purpose.

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not had the opportunity to study this issue across the Department of Justice. Through my service on the Attorney General's Advisory Committee, I did see the difficult choices that United States Attorneys across the country have had to make during this time of tight budgets, and I know that everyone in the Department has been striving to do more with less. If confirmed as Attorney General, I commit to making sure the Department's resources are utilized in the most efficient and effective manner to accomplish the Department's mission.

53. I am told that litigating attorneys within Main Justice are paid significantly more than similarly-situated federal prosecutors within the 93 U.S. Attorney Offices across the country. This pay variance is especially large at the entry level, and can differ as much as \$30,000 between similarly situated Assistant U.S. Attorneys and Justice Department trial attorneys. I am also told that the Department has the authority to correct the problem because it arises out of the uneven treatment in pay of Assistant U.S. Attorneys, covered under the specialized Administratively Determined pay schedule for Assistant U.S. Attorneys, and the pay of all other Department attorneys, covered under the government-wide General Schedule. In your capacity as chair of the Attorney General's Advisory Committee, what have you done to address this problem, and what will you do to correct it, if you are confirmed as Attorney General?

RESPONSE: The Attorney General's Advisory Committee was recently briefed by a working group of Department officials on the topic of disparity between the General Schedule and the Administratively Determined pay schedule. The topic continues to be examined. As Attorney General, I would be committed to ensuring that all attorneys within the Department of Justice are compensated on a fair and equitable basis.

54. On January 16, 2014, Attorney General Holder announced a new policy that prohibits federal agency forfeiture of assets seized by state and local law enforcement agencies. Would you agree that these forfeitures are important tools that enable law enforcement to effectively investigate, disrupt, and dismantle criminal organizations? If confirmed, will you continue Attorney General Holder's policy?

RESPONSE: I support Attorney General Holder's recently issued policy on federal adoptions and, if confirmed as Attorney General, would continue it. When the federal asset forfeiture program was first instituted, many states did not have forfeiture laws on the books. As a result, state and local law enforcement agencies lacked the necessary legal mechanism to forfeit property that had been used in a crime. The practice of adoption was a response to that

situation. Today, however, all states have some form of asset forfeiture laws on the books. The Department's new adoption policy reflected, in part, recognition of this change in circumstances.

But even under the new policy, there are still some limited situations in which we continue to believe that federal adoption of assets seized by state and local authorities is appropriate. This "public safety" exception within the policy includes assets such as firearms, ammunition, explosives, and property used in child pornography.

This new policy will ensure that federal asset forfeiture can continue to be used to take the profit out of crime and return assets to victims, while safeguarding civil liberties and the rule of law. At the same time, it will encourage joint investigations between federal and state and local law enforcement, to continue strong working relationships with state and local partners including the sharing of law enforcement intelligence.

55. Have you ever expressed an opinion on whether the death penalty is unconstitutional? If so, what was that opinion? If not, do you have such an opinion and what is it?

RESPONSE: As I testified before the Committee, I believe the death penalty is an effective penalty. In bringing such cases, I will be guided, as I was during my time as a federal prosecutor, by the evidence and the law.

56. When Attorney General Holder announced that the administration would no longer defend the Defense of Marriage Act (DOMA), he claimed that by doing so, it was acting consistent with the Justice Department's "longstanding practice of defending the constitutionality of duly-enacted statutes if reasonable arguments can be made in their defense." Do you agree that there are several reasonable arguments in defense of DOMA, including that the law is rationally related to legitimate government interests in procreation and childrearing, or do you agree with the administration that it is not rationally related to those ends?

RESPONSE: When Congress passes a law, the Department of Justice should vigorously defend the constitutionality of that law. That is a vitally important principle and a longstanding tradition of the Department of Justice, which affords appropriate respect to Congress as a co-equal branch of government, and I fully subscribe to it. There are limited exceptions to that rule, however, and I understand that the Attorney General, in a February 23, 2011, letter to Speaker Boehner, concluded that, under the Equal Protection component of the Due Process Clause, discrimination based on sexual orientation is reviewed under heightened scrutiny standard of review, and based on that conclusion determined that there were not reasonable arguments to be made in defense of Section 3 of the Defense of Marriage Act (DOMA). The Supreme Court has now invalidated Section 3 of DOMA.

57. Do you acknowledge that the George W. Bush administration successfully defended DOMA on the basis that the law is rationally related to legitimate government interests in procreation and childrearing?

RESPONSE: The Supreme Court has addressed the constitutionality of Section 3 of the Defense of Marriage Act (DOMA), and held that it is unconstitutional under the Equal Protection component of the Due Process Clause. Accordingly, arguments in defense of the statute were rejected. I have not reviewed the filings the Department made before the Attorney General's letter to Speaker Boehner in February 2011. In any event, the Supreme Court has now resolved the constitutionality of Section 3 of DOMA.

58. Do you acknowledge that those same arguments had been relied on by federal and state courts in upholding states' traditional marriage laws?

RESPONSE: The constitutionality of state marriage laws that exclude same-sex couples is currently being considered by the Supreme Court, and Attorney General Holder has indicated that the Department of Justice will file a brief in that case. My understanding is that, although the clear majority of lower courts to consider that issue have held that the laws before them are unconstitutional, a few federal and state courts have upheld such laws on a variety of grounds.

59. Do you agree that the Executive Branch has a clear and unwavering duty to vigorously defend the constitutionality of any law for which a reasonable defense may be made?

RESPONSE: When Congress passes a law, the Department of Justice should vigorously defend the constitutionality of that law. That is a vitally important principle and a longstanding tradition of the Department of Justice, which affords appropriate respect to Congress as a co-equal branch of government, and I fully subscribe to it. There are only two exceptions. The first is where a statute violates the separation of powers by infringing on the President's constitutional authority. The second is where there are no reasonable arguments that can be offered in defense of a statute. These exceptions are narrow, and they should be invoked only after the most careful deliberation.

60. Do you agree that there is a difference between refusing to defend a law that the administration regards as unconstitutional and refusing to defend a law that the administration opposes on policy grounds?

RESPONSE: Yes.

61. Do you agree that if an administration refuses to defend clearly constitutional laws based on its own policy views, it is violation of the oath to protect and defend the Constitution and the laws of the United States?

RESPONSE: As noted above, by principle and longstanding tradition, when Congress passes a law, the Department of Justice should vigorously defend that law against a constitutional challenge. There are two principal exceptions to that tradition. The first is where a statute violates the separation of powers by infringing on the President's constitutional authority. The second is where there are no reasonable arguments that can be offered in defense of a statute. Neither exception encompasses a law that an administration opposes merely on policy grounds. If confirmed as Attorney General, I would comply fully with the Department's longstanding tradition.

62. According to the questionnaire that you submitted to the Committee, in February 2006, you spoke at the Federal Bar Council Winter Bench and Bar Conference on whether international law should be considered by United States courts. You indicated that you did not have lecture notes and that no transcript of the event is available. Please describe the substance of your remarks at that conference.

RESPONSE: While I do not have a specific recollection of my remarks at this event held in February 2006, I believe I was part of a panel wherein the participants were asked to represent different views for the purpose of discussion. If confirmed as Attorney General, I would uphold the Constitution and laws enacted by Congress as interpreted by the Supreme Court.

63. Have you ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law? If so, what was that opinion? If not, do you have such an opinion?

RESPONSE: It is my belief that there are limited circumstances in which the courts of law of the United States could appropriately apply foreign law. For example, a choice of law clause in a contract may mandate the application of foreign law in a contractual claim, or a conflict-of-law analysis by a court may result in a determination that the substantive law of a foreign jurisdiction governs a particular dispute.

64. Have you ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law in deciding the meaning of the U.S. Constitution? If so, what was that opinion? If not, do you have such an opinion?

RESPONSE: Although I have not had occasion to address this question in my role as a United States Attorney, if confirmed as Attorney General, I will be guided by applicable Supreme Court precedent.

65. Do you think that the jurisdiction of the International Criminal Court is based in customary international law, or solely on ratification of the Rome Statute?

RESPONSE: I have not had occasion to encounter questions concerning the jurisdiction of the International Criminal Court in my role as a United States Attorney, and as a result, I do not have developed views on this issue at this time.

66. In April 2009, a Spanish judge began an investigation into alleged torture at the detention facility at Guantanamo Bay. Speaking to reporters in Berlin a few days later, Attorney General Holder was asked whether the Justice Department would cooperate with such an investigation. He said: "Obviously, we would look at any request that would come from a court in any country and see how and whether we should comply with it . . . This is an administration that is determined to conduct itself by the rule of law and to the extent that we receive lawful requests from an appropriately created court, we would obviously respond to it." He later clarified his statement by saying that he was talking only about "evidentiary requests." If confirmed, how would you respond to such investigations and evidentiary requests?

RESPONSE: In the event I am confirmed as Attorney General and the United States receives an evidentiary request from a foreign state, I will review the contours of the request and the United States' legal obligations—if any—to respond before determining how to proceed.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015**

QUESTIONS FROM SENATOR SESSIONS

1. In Question 1, you were asked whether you believe that President Obama has exceeded his executive authority in any way and, if so, how. You responded: "As the United States Attorney for the Eastern District of New York, I have not been charged with determining when and whether the President has exceeded his executive authority." While I understand that you may not have been charged with making such determinations in your capacity as United States Attorney, the question did not ask whether you were charged with such determinations. Should you be confirmed as Attorney General, you will be responsible for such determinations. In order to properly evaluate your nomination, it is important for members to know your views in that regard. Please take this opportunity to consider and respond to the original question.

RESPONSE: While in my current role I have not been charged with making determinations about whether the President has exceeded his executive authority. I do understand that if I am confirmed as Attorney General, I will oversee the Department in its role of advising the President with respect to the constitutionality of proposed actions. I recognize and fully appreciate that, when advising the President regarding proposed executive actions, it is the Department of Justice's responsibility to provide candid, independent, and principled legal advice regarding the lawfulness of the proposed actions, even where that advice is inconsistent with the preferences of policymakers. As I testified at my confirmation hearing, if I am confirmed as Attorney General, I will take the Constitution and the laws of the United States as my guide in exercising the powers and responsibilities of that office, and I will fulfill those responsibilities with integrity and independence. I will appropriately supervise the Office of Legal Counsel, which I would expect (consistent with its mission) to provide advice regarding the lawfulness of such actions based only on a thoroughly researched, soundly reasoned, and independent assessment of the law.

2. In Question 5, you were asked whether Saddiq al-Abbadi, Ali Alvi, and Faruq Khalil Muhammad 'Isa are unlawful enemy combatants and, as such, could be tried before a military commission and detained for the duration of hostilities under the law of war. You responded:

"I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In any particular case, representatives of the agencies who are tasked with protecting the American people, including the Department of Defense, the Department of Homeland Security, the Department of Justice and agencies in the Intelligence Community, work together to determine the most effective tools to apply in that case, based on the particular facts and applicable law. As the United States

Attorney for the Eastern District of New York, my role to date has been limited to determining whether or not there was a prosecutable federal case, not which was the appropriate tool to employ.”

You also said that because the cases referred to in Question 5 are ongoing prosecutions, you “cannot comment on the specific facts or decision-making processes in those matters, other than to indicate that the process described above was observed.” The question did not ask you to disclose details about the decision-making process in the above cases nor did it address your role in the decision to prosecute the individuals in Article III courts. Instead, it asked whether the individuals qualify as unlawful enemy combatants and, as such, could be tried before a military commission and detained for the duration of hostilities. Please take this opportunity to answer that question.

RESPONSE: As I mentioned in my original answer, as United States Attorney, my role has been limited to determining whether there was a prosecutable federal criminal case. Accordingly, I have not had the opportunity to carefully consider whether these individuals qualify as “unlawful enemy combatants” or whether they could be tried before a military commission and detained for the duration of hostilities.

Because this is an ongoing prosecution, I cannot comment on the specific facts, but it is my understanding that if it could be established from such conduct that the individuals were part of or substantially supporting al-Qaida, the Taliban, or associated forces, they could be detained pursuant to the Authorization for the Use of Military Force of 2001 (AUMF), as informed by the laws of war. It is also my understanding that individuals engaged in such alleged conduct could fall within the jurisdiction of the Military Commissions Act.

3. In your responses to Question 9, which asked about the distinctions between the civilian and military justice systems with regard to interrogation and the right to remain silent; Question 11, which asked about the distinctions between the civilian and military justice systems with regard to bringing an arrestee before a judge; and Question 12, which asked about the distinctions between the civilian and military justice systems with regard to charging timelines, you included in your answer the following: “I have not had the occasion as a United States Attorney to examine the requirements under the military commission system, but, if confirmed as Attorney General, I would support using all lawful tools of national power, including the military commission system, to protect the nation from terrorism.” However, in response to Question 5, you stated that you “believe strongly that the United States government must use every available tool,” including military commission trials, to protect the American people. If you believe that military commissions are one of the “tools” available to the government to protect the American people, you must have some familiarity with the military commission system. Accordingly, please take this opportunity to answer the original questions posed by Questions 9, 11, and 12. Please also explain what you mean by the phrase “national power.”

RESPONSE: With respect to Question 9 concerning interrogation and the right to remain silent, I explained that the Miranda warning would not be required for interrogations that are solely for the purposes of intelligence collection and will not be used in a criminal prosecution. Moreover, the government may make use of the public safety exception as articulated by the Supreme Court in *New York v. Quarles* under which public safety-focused questions may be admissible at trial even if Miranda warnings are not provided. Accordingly, I disagree with the categorical statement that in the civilian justice system, defendants are required to be told they have the right to remain silent and that interrogation must stop if they invoke that right. I agree, however, that there is no such requirement in the military commission system, which applies to certain “unprivileged belligerents” as defined in the Military Commissions Act.

With respect to Question 11 concerning the requirement to bring an arrestee before a judge, I explained that while Federal Rule of Criminal Procedure 5 requires a federal law enforcement officer to promptly bring an arrestee before a magistrate judge “without unnecessary delay,” an individual may voluntarily waive this requirement, as has occurred with some frequency in terrorism cases. Accordingly, I disagree with the unqualified statement that in the civilian justice system, an individual must be brought promptly before a judge and be charged with a crime or released. I agree, however, that there is no such requirement in the military commission system.

With respect to Question 12 concerning charging timelines, I explained that the Speedy Trial Act imposes a number of time limits within which a defendant must be indicted and brought to trial, but that these may be suspended for good cause or by waiver of a defendant. Accordingly, the civilian justice system preserves the flexibility necessary to address the unique circumstances posed by prosecutions of terrorists. I agree that the United States military may detain individuals who are part of or substantially supporting al-Qaida, the Taliban, and associated forces without criminal charges or trial for the duration of the conflict, consistent with the 2001 AUMF as informed by the laws of war.

There are a number of differences between the civilian justice system and military commissions, including jurisdictional differences and differences in the types of offenses that may be prosecuted, which must be taken into account in determining the appropriate tool in any particular case. If confirmed as Attorney General, I would work with representatives from the agencies who are tasked with protecting the American people, including, as appropriate, military commission prosecutors, to determine the most effective tools to apply in a case, based on the particular facts and applicable law.

I used the phrase “tools of national power” to refer to lawful tools available to the Government, including military, diplomatic, economic, law enforcement and intelligence tools.

4. In Questions 14 and 15, you were asked whether you believe it should be the policy of the United States to negotiate with terrorists and, if confirmed, whether you will advise the president to keep in place the United States' longstanding policy of not negotiating with terrorists. In your response to each question, you stated: "It is my understanding that it is the policy of the United States not to grant concessions to terrorists. If confirmed, I would support that policy." Please explain what you mean by "grant concessions." Please also explain the difference between "negotiating" with terrorists and "granting concessions" to terrorists.

RESPONSE: It is my understanding that the no concessions policy would prevent the government from providing any benefit to a terrorist group holding hostages. Although I have not studied the issue, it would be important to maintain lines of communication with hostage takers in order to explore all options to secure the safe return of U.S. hostages, consistent with the no concessions policy.

5. In Question 16, you were asked whether you support a permanent extension of a number of intelligence gathering authorities under the Foreign Intelligence Surveillance Act (FISA), which are set to expire on June 1, 2015. You responded:

"Although I have not had the occasion to consider these particular provisions of the Foreign Intelligence Surveillance Act (FISA) as a United States Attorney, I believe that it is important that our intelligence and law enforcement professionals have the full panoply of tools to deal with evolving national security threats like international terrorism, while ensuring that we use those tools in a way that effectively protects privacy and civil liberties. As I mentioned during the hearing, as a prosecutor, I am quite familiar with the invaluable benefits provided by roving wiretaps in narcotics prosecutions; those wiretaps are critical to conducting electronic surveillance against those attempting to evade it and are only issued after judicial review.

I understand that the Administration supported the USA FREEDOM Act, which would have extended these three provisions of FISA while also providing additional privacy protections, including prohibiting bulk collection under Section 215. If confirmed as Attorney General, I look forward to working with this Committee, as well as the Intelligence committees, on legislation to counter serious national security threats in a manner that also protects the privacy and civil liberties of our citizens."

While I appreciate your view that it is important for intelligence and law enforcement professionals have the full panoply of tools to deal with evolving national security threats, your response did not address whether you would support a permanent extension of intelligence-gathering authorities under 50 U.S.C. § 1805(c)(2)(B), 50 U.S.C. §§ 1861-2, and 50 U.S.C. § 1801(b)(1)(c). Please take this opportunity to respond to the original question.

RESPONSE: As the Administration and the Intelligence Community have stated, these three provisions of FISA are important tools to help protect our Nation from terrorist attacks, and it is critically important that Congress pass legislation to prevent these authorities from lapsing. If confirmed, I would support the extension of these provisions and commit to working with Congress to ensure the Intelligence Community has the necessary authorities to meet our national security needs consistent with our shared commitment to privacy and civil liberties.

6. In Question 18, you were asked to explain your understanding of the scope of the immunity provided to U.S. personnel involved in certain detentions and interrogations of enemy combatants between September 11, 2001 and December 30, 2005. You responded: “I have not had occasion to address that statute in my role as a United States Attorney, but I have reviewed the statute and believe that it describes in plain terms the scope of immunity.” Please take this opportunity to familiarize yourself with the statute and provide an answer to the original question.

RESPONSE: Although I have not had occasion to address this provision in my role as a United States Attorney, based on a review in connection with responding to these questions, I understand that the statute provides a defense for certain actions of agents of the U.S. government who are U.S. persons where the U.S. persons did not know that their actions were unlawful and a person of ordinary sense and understanding would not know that the actions were unlawful. This defense is applicable in a civil action or criminal prosecution against such a U.S. person arising out of that person’s engagement in specific operational practices that involve the detention or interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests or its allies, and that were officially authorized and determined to be lawful at the time they were conducted. The defense applies with respect to any criminal prosecution that relates to the detention and interrogation of such aliens, is grounded in 18 U.S.C. § 2441(c)(3), and relates to actions occurring between September 11, 2001, and December 20, 2005.

7. In Question 23(b), you were asked if you agree that drug trafficking is a serious offense that is deserving of equally serious mandatory minimums in order to deter such behavior. In response, you stated:

“As I noted in my testimony before the Committee, with respect to the enforcement of the narcotics laws that contain mandatory minimums—laws which I have had occasion to use on numerous occasions as a career prosecutor and United States Attorney—those laws are being followed not just by my Office but throughout the United States Attorney community. Every United States Attorney’s Office retains and exercises the discretion to seek a mandatory minimum sentence. We also look at the nature of the crime and narcotics problems in our particular districts to determine whether a mandatory minimum sentence would be appropriate under the particular facts of each case.”

This statement did not answer the question. Please take this opportunity to do so.

RESPONSE: I believe trafficking in illegal drugs is a serious crime. Current federal law provides for mandatory minimum sentences for some drug trafficking offenses but not for others. I agree with congressional intent, as expressed in the drug trafficking provisions of Title 21, that some drug trafficking offenses are deserving of a severe mandatory minimum penalty, while others are not.

8. In Question 32, you were asked if you agree with Attorney General Holder's statement that a ban on so-called "assault weapons" and large capacity magazines, universal background checks, and new unnecessarily high criminal penalties for firearm offenses are "really reasonable gun safety measures." You responded:

"As a United States Attorney, one of my highest priorities has been to protect Americans from violent crime, including violent gun crime. I understand that the Administration supports passage of legislation that would strengthen and enhance the now-sunsetted 1994 Public Safety and Recreational Firearms Use Protection Act. If confirmed, I look forward to working with Congress on any appropriate legislation toward that end.

This statement did not answer the question. Please take this opportunity to do so.

RESPONSE: I am not familiar with the context of the Attorney General's remarks and would not want to speculate on what he may have intended by them. As I previously stated, I am aware that the Administration supported passage of specific legislation regarding firearms, but that legislation did not become law.

9. In Question 35, you were asked whether, if confirmed, you would commit to devote Justice Department resources to put a stop to the practice of state and local jurisdictions' refusal to honor ICE detainees. You responded:

"I support efforts to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. If confirmed as Attorney General, I will continue the Department's efforts to work closely with the Department of Homeland Security and state and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws."

This statement did not answer the question. Please take this opportunity to do so.

RESPONSE: I believe that all efforts should be undertaken to support state and local law enforcement authorities to notify ICE of pending releases of criminal aliens during the time that these individuals are otherwise in custody under state or local authority so that the individuals

can be taken into ICE custody for removal. I believe this is a valid and important law enforcement objective to protect the public safety.

10. In Question 36, you were asked whether, if confirmed, you would support withholding State Criminal Alien Assistance Program (SCAAP) grants to jurisdictions that refuse to honor ICE detainees. You responded:

“I understand that while the Prison Rape Elimination Act provides that certain grant funds will be withheld from states that are noncompliant, a similar statutory penalty is not present in the State Criminal Alien Assistance Program (SCAAP). If confirmed as Attorney General, I will work closely with leadership of the Bureau of Justice Assistance, which administers SCAAP, and my colleagues at the Department of Homeland Security to examine ways to improve SCAAP.”

While I appreciate your commitment to examining ways to improve SCAAP if confirmed, your response does not answer whether you would support withholding SCAAP grants to jurisdictions that refuse to honor ICE detainees. Please take this opportunity to respond to the original question.

RESPONSE: Unlike the PREA program, which has a statutory mandate for withholding certain formula funds for noncompliance with the PREA standards, it is my understanding that there is no similar statutory authority for SCAAP. In addition, SCAAP is a reimbursement program and not a grant program, like PREA and other Department of Justice grant programs. If confirmed as Attorney General, I will examine the authority granted to the Department for administering SCAAP funds and review whether there is authority to deny or restrict funds to jurisdictions that refuse to honor ICE detainees.

11. In Question 39, you were asked if you will commit to working with Congress to rebuild the 287(g) program, and devote the necessary Justice Department resources to the program. You responded:

“In my position as the United States Attorney for the Eastern District of New York, I have had no role in addressing ICE’s implementation of the 287(g) program. I look forward to learning more about the 287(g) program and other ICE programs directed at public safety, if I am confirmed as Attorney General.”

While I understand that as United States Attorney you have had no role in addressing ICE’s implementation of this program, the question asked simply whether you would commit to work with Congress to rebuild the program and devote the necessary Justice Department resources to the program. Please take this opportunity to respond to the original question.

RESPONSE: As I noted in response to Question 39, I am committed to public safety in the enforcement of federal immigration laws and to working with federal and state law enforcement

partners in continuing efforts to secure our borders and protect our national security. If confirmed as Attorney General, I would also work with Congress in order to achieve these critically important objectives, and I am certainly committed to working with Congress to determine the best path forward, whether it is the 278(g) program or some other program.

12. In Question 40, you were asked if you will commit to reinstating Operation Streamline and ensure that the Justice Department has or requests the necessary resources to expand the program across the southwest border. You responded:

“As the United States Attorney for the Eastern District of New York, I have not stood in the shoes of the Southwestern Border United States Attorneys as they have set their priorities. While I have great confidence in those United States Attorneys, if confirmed as Attorney General, I will personally take a close look at the policies governing prosecution of illegal border crossers to ensure that those policies are best protecting the security of the United States and its citizens.”

While I understand that you have not had a role in setting the priorities of the Southwestern Border United States Attorneys, in order to properly evaluate your nomination, it is important for members to know how you would prioritize Department resources if confirmed. Accordingly, please take this opportunity to respond to the original question.

RESPONSE: As I tried to describe in my previous answer, in my current role, I do not have the detailed information necessary to be able to comment on how I might prioritize Department resources to address improper entry by aliens along the Southwestern Border of the United States. If confirmed, I can assure you that in conducting my evaluation, the security of the United States and the safety of its citizens will be my top priority. I recognize that this is an important issue, and if fortunate to be confirmed, I will work closely with the Committee on budgetary issues related to the enforcement of immigration laws. In my view, public safety and national security should not be jeopardized by budget challenges.

13. Question 42 states that the Office of Legal Counsel (OLC) opinion regarding the president’s executive action does not identify any statutory authority for the provision of Employment Authorization Documents to the majority of the individuals eligible for either the Deferred Action for Childhood Arrivals or the Deferred Action for Parents of Americans and Lawful Permanent Residents programs. The question asked you to identify the legal authority for the provision of Employment Authorization Documents to these individuals. You responded: “It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department’s brief for a full discussion of this issue.” The question did not ask you to comment on matters subject to pending litigation, but rather asked you to cite a legal authority for the basis for OLC’s analysis – an analysis which you repeatedly characterized as “reasonable” during your testimony before this Committee. Please take this opportunity to respond to the original question.

RESPONSE: It is my understanding that the Office of Legal Counsel cited 8 U.S.C. § 1324a(h)(3) and 8 C.F.R. § 274a.12(c)(14) as the legal basis for granting work authorization to deferred action recipients who can demonstrate an economic necessity for employment. OLC’s opinion explains that “DHS’s power to prescribe which aliens are authorized to work in the United States . . . is grounded in 8 U.S.C. § 1324a(h)(3), which defines an ‘unauthorized alien’ not entitled to work in the United States as an alien who is neither an LPR nor ‘authorized to be . . . employed by [the INA] or by the Attorney General [now the Secretary of Homeland Security].’” OLC Op. at 18. The opinion further explains that, since 1981, a regulation has permitted “aliens who lack lawful immigration status to apply for work authorization, including deferred action recipients who can demonstrate an economic necessity for employment. See 8 C.F.R. § 274a.12(c)(14).” *Id.* at 19.

14. In Question 45, you were asked specific questions about the Board of Immigration Appeals’ (BIA) decision in the *Matter of Chairez*, 26 I&N Dec. 349 (2014). You responded:

“As the United States Attorney for the Eastern District of New York, I have not been involved in any matters pending before the Board of Immigration Appeals, and I have not had the opportunity to review the Board’s decision in *Matter of Chairez* [sic]. If confirmed as Attorney General, I look forward to learning more about these important issues.”

While I appreciate your willingness to learn more about these issues if confirmed, this statement does not answer the question. The decision(s) to which I refer are available on the Justice Department’s website: <http://www.justice.gov/eoir/vll/intdec/vol26/3807.pdf>; <http://www.justice.gov/eoir/vll/intdec/vol26/3825.pdf>. Please familiarize yourself with this case and take this opportunity to respond to the original questions.

RESPONSE: It is my understanding that the Board of Immigration Appeals (BIA) recently vacated its 2014 decision in *Matter of Chairez* and held that immigration judges must follow its interpretation of *Descamps v. United States*, 133 S. Ct. 2276 (2013), to the extent that there is no controlling authority to the contrary in the circuit court of appeals in whose jurisdiction immigration judges sit.

If I am confirmed as Attorney General, I will ensure that the Executive Office for Immigration Review (of which the BIA and the immigration courts are part) serves its stated mission of uniformly interpreting and administering the Nation’s immigration laws. Having the BIA and immigration judges follow applicable federal court precedents would serve that mission.

15. In Questions 46(a) and 46(b), you were asked whether the BIA’s “*Pro Bono Project*” – which is housed within the Justice Department – complies with 8 U.S.C. §1229a and whether, if confirmed, you will direct the BIA to stop using taxpayer resources to find counsel for aliens and eliminate the program. You responded:

“The government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If confirmed as Attorney General, I look forward to learning more about this important issue.”

Please take this opportunity to familiarize yourself with this program and provide an answer to the original question.

RESPONSE: I do not read 8 U.S.C. § 1362 to bar the government from exercising its discretion to fund (or, in the case of the BIA Pro Bono Project, to facilitate) legal representation in certain immigration proceedings. Rather, the statute simply provides that an alien’s right to counsel in those proceedings does not include a right of representation at the government’s expense.

It is my understanding that the BIA Pro Bono Project is designed to match *pro se* respondents who have pending cases before the BIA with *pro bono* counsel who are able to better and more effectively prepare appeals than aliens acting without such assistance. Further, it is my understanding that the project does not use government funds to pay those lawyers.

16. In Questions 47(a) and 47(b), you were asked whether a federally funded AmeriCorps program – “justice AmeriCorps” – that provides attorneys to aliens in immigration proceedings complies with federal law. You were also asked whether, if confirmed, you will cease using taxpayer resources to provide attorneys for aliens in immigration proceedings and eliminate the program. In response, you stated:

“The government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If confirmed as Attorney General, I look forward to learning more about this important issue.”

Please take this opportunity to familiarize yourself with this program and provide an answer to the original question.

RESPONSE: As I noted above, I do not read 8 U.S.C. § 1362 to bar the government from exercising its discretion to fund legal representation in certain immigration proceedings. Rather, the statute simply provides that an alien’s right to counsel in those proceedings does not include a right of representation at the government’s expense.

Although I was not involved in the development or implementation of the justice AmeriCorps program, I understand that it is designed to provide funding for legal representation to certain unaccompanied alien children in immigration proceedings in order to increase the efficient and effective adjudication of those proceedings.

If confirmed, I will look for ways through this program and other lawful initiatives to improve the conduct of immigration proceedings.

17. In Question 51, you were asked whether you believe that the Fairness Doctrine is constitutional. You responded:

“I have not had occasion to encounter this issue in my role as a United States Attorney. If Congress is considering legislation that would codify the fairness doctrine, I would welcome, if confirmed as Attorney General, the opportunity for the Department of Justice to evaluate the constitutionality of such legislation.”

While it is not surprising that you have not had occasion to encounter this issue in your role as United States Attorney, this statement does not answer the question. Please take this opportunity to do so.

RESPONSE: As I noted previously, I have not had occasion to encounter questions concerning the Fairness Doctrine in my role as United States Attorney. I understand that the FCC and the Department concluded in the 1980s that the doctrine was unconstitutional, but have not had occasion to consider the analysis supporting those determinations or to consider whether the intervening quarter century of First Amendment jurisprudence alters that analysis. As a result, I do not have developed views on the constitutionality of the doctrine at this time, and I would not want to prejudge the issue in the event the Department should be presented with it in the future. If confirmed as Attorney General, I would, as noted, ensure that the Department fully evaluated the constitutionality of the doctrine if presented by an effort to reenact or otherwise implement it.

18. In Question 55, you were asked if you have ever expressed an opinion on whether the death penalty is unconstitutional, and whether you have such an opinion. In response, you stated: “As I testified before the Committee, I believe the death penalty is an effective penalty. In bringing such cases, I will be guided, as I was during my time as a federal prosecutor, by the evidence and the law.” While I appreciate your view that the death penalty is an effective penalty, the statement did not answer the question. Please take this opportunity to do so.

RESPONSE: To the best of my recollection, I have not expressed an opinion on whether the death penalty is unconstitutional. As I stated before, I believe the death penalty is an effective penalty and it is one that I have sought as a United States Attorney.

19. In Question 57, you were asked whether you acknowledge that the George W. Bush administration successfully defended the Defense of Marriage Act (DOMA) on the basis that the law is rationally related to legitimate government interests in procreation and childrearing. You responded:

“The Supreme Court has addressed the constitutionality of Section 3 of the Defense of Marriage Act (DOMA), and held that it is unconstitutional under the Equal Protection component of the Due Process Clause. Accordingly, arguments

in defense of the statute were rejected. I have not reviewed the filings the Department made before the Attorney General's letter to Speaker Boehner in February 2011. In any event, the Supreme Court has now resolved the constitutionality of Section 3 of DOMA."

This statement does not answer the question. Please take this opportunity to do so.

RESPONSE: As I stated in my original answer, the Supreme Court has addressed the constitutionality of Section 3 of the Defense of Marriage Act, and held that it is unconstitutional. Prior to the Supreme Court's decision, some lower courts upheld the constitutionality of the statute under a rational basis standard of review, concluding that it was rationally related to a variety of governmental interests. Prior to the Attorney General's letter to Speaker Boehner in February 2011, the Department filed briefs defending the statute along those lines. The Supreme Court, however, has now resolved the validity of the arguments made in defense of the statute, including the particular argument your question references.

20. In Question 64, you were asked if you have ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law in deciding the meaning of the United States Constitution and whether you have such an opinion. You responded: "Although I have not had occasion to address this question in my role as United States Attorney, if confirmed as Attorney General, I will be guided by applicable Supreme Court precedent." While I appreciate your commitment to follow precedent, this statement does not respond to the question. Please take this opportunity to do so.

RESPONSE: It is my belief that the contours of certain provisions of the Constitution may be properly informed by the English common law, which is a foreign law; such provisions may include, for example, those that safeguard the right to trial by jury and the right of the people to be secure against unreasonable searches and seizures. I have not had the opportunity to consider whether there are other circumstances in which it is appropriate to consider foreign law in the course of interpreting the Constitution.

21. In Question 65, you were asked whether you think that the jurisdiction of the International Criminal Court is based in customary international law, or solely on ratification of the Rome Statute. You responded: "I have not had occasion to encounter questions concerning the jurisdiction of the International Criminal Court in my role as a United States Attorney, and as a result, I do not have developed views on this issue at this time." While I understand you have not had occasion to encounter such questions in your role as United States Attorney, this statement does not answer the question. Please take this opportunity to do so.

RESPONSE: As I noted previously, in my role as United States Attorney, I have not had occasion to encounter questions concerning the jurisdiction of the International Criminal Court (ICC). As a result, I have not had the opportunity to consider the basis for the ICC's jurisdiction,

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and do not have developed views at this time. If confirmed as Attorney General, I would look forward to learning more about this issue.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR TILLIS

1. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of seven days of so-called "early voting" by reducing the early voting window from 17 to 10 days. The Department of Justice claimed the 7 day reduction was a violation of the law. However, numerous states do not offer any form of early voting. Therefore, if you are confirmed to serve as the next United States Attorney General, will you instruct the Voting Rights Section of the Department to pursue litigation against states that do not offer early voting at all on the same basis as the Department has brought suit against NC for merely reducing the number of early voting days from 17 to 10? If not, would you please explain the rationale for why you would not have the Department pursue such states?

RESPONSE: As the United States Attorney for the Eastern District of New York, I have not analyzed closely the election laws of North Carolina and other states. My general understanding is that the Department considers questions of the validity of voting practices based on a variety of factors, including the requirements of the federal law being enforced, the particular facts of the practice being investigated, and the specific facts in the jurisdiction. A number of these questions are at issue in pending litigation in which the Department is participating, and for this reason I cannot comment further.

2. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of "same day registration." However, numerous states have never offered "same day registration." Therefore, if you are confirmed to serve as the next United States Attorney General, will you instruct the Voting Rights Section of the Department to pursue litigation against states that never offered "same day registration" on the same basis as the Department has brought suit against NC for eliminating "same day registration?" If not, would you please explain the rationale for why you would not have the Department pursue such states?

RESPONSE: As set forth above, in my current position, I have not had occasion to analyze closely the election laws of North Carolina and other states. My general understanding is that the Department considers questions of the validity of voting practices based on the particular requirements of the federal law being enforced, the particular facts of the practice being

investigated, and the particular facts in the jurisdiction. A number of these questions are at issue in pending litigation in which the Department is participating, and for this reason, I cannot comment further.

3. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked several questions about litigation filed by the United States Department of Justice against North Carolina regarding election law changes enacted by the state during 2013. During the course of those questions, I pointed out that one of the claims in the North Carolina litigation involved North Carolina's elimination of the counting of votes cast on election day outside the precinct where a voter is registered. Given that numerous states do not count votes cast out of precinct on election day, will you, if you are confirmed to serve as the next United States Attorney General, instruct the Voting Rights Section of the Department to pursue litigation against those states? If not, please explain why not.

RESPONSE: My general understanding is that the Department considers questions of the validity of voting practices based on the particular requirements of the federal law being enforced, the particular facts of the practice being investigated, and the particular facts in the jurisdiction. A number of these questions are at issue in pending litigation in which the Department is participating, and for this reason, I cannot comment further.

4. During the January 28, 2015 hearing, you testified that "the right and obligation to work is shared by everyone in this country, regardless of how they came here." Do you believe the citizens of any foreign country in the world has the right to work in the United States if they can only reach America's shores? Do you believe individuals who have entered the country illegally also have the right to vote in local, state, or national elections? Please explain your answer.

RESPONSE: With respect to my comment during my congressional testimony, I was stating my personal belief that it would be better for individuals in this country to be working to support themselves and their families and contributing to our economy than remaining unemployed. But it is my understanding that only citizens and those duly authorized to seek employment by the Department of Homeland Security are legally able to work. With regard to voting, it is my understanding that individuals who have entered the country illegally do not have any federal right to vote in our elections. I understand that various federal statutes enacted by Congress provide criminal penalties for false assertions of United States citizenship in connection with registration and voting, as well as criminal penalties for aliens voting in elections for federal office. If I am confirmed as Attorney General, I am committed to enforcing those statutes in an even-handed manner.

5. In July of 2014, during a preliminary injunction hearing in the case of *Holder v. North Carolina*, 997 F. Supp. 2d 322 (M.D.N.C. 2014), an expert testifying on behalf of the United States Department of Justice opined:

Also, understanding within political science, that people who register to vote the closer and closer one gets to Election Day tend to be less sophisticated voters, tend to be less educated voters, tend to be voters who are less attuned to public affairs. . . . People who correspond to those factors tend to be African Americans, and, therefore, that's another vehicle through which African Americans would be disproportionately affected by this law.

Are you willing to condemn the reasoning of this expert witness insofar as his testimony effectively asserted that African American voters tend to be "less sophisticated" than non-minority voters? If not, please explain why not. Would you agree that the Department of Justice should not use taxpayer dollars to retain such experts who hold such opinions?

RESPONSE: Because this question relates to pending litigation in which the Department is participating, I cannot comment.

6. Without regard to the context of the statement referenced in Question 5, above, do you agree that any assertion that minority voters are somehow "less sophisticated" than non-minority voters should be rejected as repugnant and offensive? If not, please explain why not.

RESPONSE: Because this question relates to pending litigation in which the Department is participating, I cannot comment.

7. Do you believe an attorney disciplined by a state bar, or one found to have committed prosecutorial misconduct, should be allowed to serve as an attorney at the United States Department of Justice?

RESPONSE: I am committed to ensuring that all Department attorneys carry out their duties with the highest level of integrity and professionalism, and to pursuing appropriate discipline for those who do not. The Department takes into consideration all aspects of a candidate's suitability for employment when making hiring decisions, including whether the attorney has a history of professional misconduct. By their nature, professional misconduct findings are fact-based and varied, and the Department carefully considers the allegations and conclusions of any prior discipline or misconduct findings when evaluating an attorney's suitability for employment. I will follow the Department's suitability rules and policies as applied at the time of hiring, and will support measures that ensure Department attorneys carry out their duties using excellent judgment and consistently adhering to all applicable professional responsibilities. Public service is a public trust, and I believe it is important for the Department to maintain the highest standards for all of its employees.

8. In January of 2014, you presented remarks at the Martin Luther King, Jr. Center in Long Beach, New York. During the course of those remarks, you stated the following:

There is still more work to do. People tell us the dream is not realized because dreams never are. Mandela and King knew that we had to continue working. I'd be remiss if I didn't tell you that under this President and under this Attorney General the Department of Justice is committed to following through with those dreams. 50 years after the march on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for. We stand in this country, people try and take over the state house and reverse the goals that have been made in voting in this country. But I am proud to tell you that the Department of Justice has looked at these laws and looked at what's happening in the Deep South and in my home state of North Carolina has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits will continue. [Emphasis added.]

With regard to the comment that "people try and take over the state house," please state to whom the term "people" refers, what "state house" was taken over, and what "goals that have been made in voting" are that have been reversed.

RESPONSE: The speech as a whole was a commentary on the common struggles of Nelson Mandela and the Reverend Martin Luther King, Jr., and the importance of individual commitment and perseverance, particularly in education, to help advance civil rights goals. This portion of the speech was about the importance of protecting the constitutional right to vote and the need to ensure that all eligible citizens can exercise that right free from discrimination. Whenever warranted by the facts and law, it is important to use all legal tools to safeguard the right of every eligible citizen to register to vote and to cast a ballot, as the Department has done, and continues to do in circumstances in which the facts and the law permit. The highlighted text does not refer to any specific person or jurisdiction. Rather, it is about the continued need to remain vigilant and use all legal authorities where appropriate based on the facts and law.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015**

QUESTIONS FROM SENATOR TILLIS

1. During the January 28, 2015 hearing on your nomination to serve as United States Attorney General, you were asked a number of questions that related to transparency at the Department of Justice. As you know, the Inspector General serves as an independent checking power to deter fraud and promote efficiency within the Department of Justice and other agencies. Under the Inspector General Act, the Inspector General has the authority, "to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." 5 U.S.C. App. § 6 (a)(1). This information includes Title III wiretap information, grand jury documents, and consumer credit information under the Fair Credit Reporting Act. In some situations, the Attorney General may prohibit investigations, audits, or issuance of subpoenas if the Attorney General provides written notice to the Inspector General explaining the reason such action complies with 5 U.S.C. App. § 8E (1), (2), and (3).

According to testimony from Inspector General Michael Horowitz in 2013, the Department of Justice obstructed his authority to access non-privileged documents. Instead, the practice of Attorney General Holder required the Inspector General to receive written permission before the Inspector General obtained access to non-privileged records. In my view, this practice violates the plain reading of the statute and requires the Inspector General to give deference to its auditing agency, which clearly defeats the statutory purpose and independence vested in the Inspector General.

If confirmed as Attorney General, would you continue the same practices as your predecessor?

RESPONSE: I believe strongly in the independence of the Inspector General, and share his goal of ensuring a well-functioning Department of Justice. I understand that the Office of Legal Counsel is currently working on an opinion that would address the interaction of the Inspector General Act and other statutes that specifically limit the dissemination of certain information. Regardless of the outcome of this review, if confirmed, I will commit to providing the Inspector General with the documents necessary for him to complete his reviews.

- a. If yes, specifically explain your statutory interpretation that gives the Attorney General the ability to violate the plain meaning of the statute.
 - i. Furthermore, specifically explain where you find statutory authority to require the Inspector General to comply with the current administration's practice of requiring written permission to access non-privileged documents?

- ii. Specifically explain what power the Inspector General holds to effectively audit, recommend efficiency proposals, and eliminate waste if the Attorney General can unilaterally withhold access information that is not privileged?
 - iii. If the Attorney General can unilaterally withhold information from the Inspector General without statutory justification, what prevents other federal agencies from obstructing investigations and interfering with the independent powers given to the Inspector General?
- b. If no, please specifically explain what steps you will take ensure the independence of the Inspector General's ability to audit the Department of Justice?

RESPONSE: I agree that an independent Inspector General is vital to ensuring a well-functioning Department of Justice. If confirmed, I am confident that the Inspector General and I will form a good working relationship, as we share the same goals.

2. In written questions submitted by this office previously, you responded that some of those questions related to pending litigation and that you therefore could not respond. Please explain why you were able to comment on pending litigation before a January 2014 audience in Long Beach, New York, but you are unable to do so when testifying before Congress.

RESPONSE: In my January 2014 speech, I commented on the Department's obligation to protect the constitutional right to vote and stated generally that the Department had brought suit in North Carolina. The questions that you previously asked, and which it would not be appropriate for me to answer, were those seeking responses on live issues in or details from the pending litigation.

3. In a December 2014 Report entitled "Professional Misconduct: DOJ Could Strengthen Procedures For Disciplining Its Attorneys," the Government Accountability Office concluded: "The Department of Justice (DOJ) has made changes to improve its processes for managing complaints of attorney professional misconduct since 2011 but has not implemented plans to improve processes for demonstrating that discipline is implemented, or achieving timely and consistent discipline decisions."

In light of the GAO's conclusion, one of my previous questions to you was whether an attorney disciplined by a state bar, or one found to have committed prosecutorial misconduct, should be allowed to serve as an attorney at the United States Department of Justice. Your response indicated that you would be committed to pursuing appropriate discipline for individuals who do not carry out their duties with integrity and professionalism. Surely we can agree that attorneys who have committed prosecutorial misconduct or who have been disciplined by a state bar have not always carried out their duties with integrity and professionalism. Do you, in fact, agree with that statement? Secondly, would you, consistent with any due process rights of such an employee, dismiss an employee who does not uphold the "highest standards" about which you spoke in your previous response?

RESPONSE: As I stated previously, I will pursue appropriate discipline for Department employees who do not carry out their duties with integrity and professionalism. Without knowing the facts and circumstances of a particular case, I am not in a position to respond categorically to whether “an employee who does not uphold the ‘highest standards’” will be dismissed; for instance, I understand that under applicable civil service laws and regulations, the Department must consider a number of factors concerning the employee and the findings of misconduct in determining what appropriate discipline to impose.

4. In December of 2012, you represented the Department of Justice in civil settlements with HSBC in your capacity as U.S. Attorney. You stated that the bank “routinely did business with entities on the U.S. sanctions list,” and the bank helped dangerous drug cartels move large amounts of money. In addition to your own statements, there are reports that American citizens’ personal information, such as names and social security numbers, were used to perpetuate fraud or were otherwise exposed.
 - a. Did you have knowledge that HSBC was using or had used American citizens’ personal information to perpetuate fraud when you settled the United States’ suit against HSBC?

RESPONSE: No, I was not aware of these allegations when my office entered into the 2012 Deferred Prosecution Agreement (DPA) with HSBC.

- b. Without revealing privileged information regarding the settlement reached in the HSBC matter, please describe what metric, standards, or guiding principles you would use to determine an appropriate settlement amount for similar cases going forward?

RESPONSE: In any criminal investigation regarding allegations of wrongdoing by financial institutions or other large corporations, an analysis of appropriate penalties, both financial and otherwise, should be predicated upon a thorough review of the scope and severity of the wrongdoing, the reliability of the available evidence, the viability of prosecutions of individual perpetrators, and the other factors identified in the Department’s Principles of Federal Prosecution of Business Organizations.

- c. Please explain the Department’s rationale for not pursuing criminal prosecution in the HSBC matter.

RESPONSE: In the HSBC case, the penalties and remedial measures encompassed in the DPA were appropriate to address the compliance failures and sanctions violations enumerated in the Statement of Facts. As the United States District Judge overseeing the case observed in his opinion approving the DPA, “the DPA imposes upon HSBC significant, and in some respect

extraordinary, measures” and the “decision to approve the DPA is easy, for it accomplishes a great deal.”

For example, the anti-money laundering provisions of the Bank Secrecy Act apply only to domestic U.S. financial institutions. The DPA requires HSBC to engage in anti-money laundering and compliance efforts beyond the requirements of the Bank Secrecy Act, and it requires such efforts worldwide, and that HSBC follow the highest or most effective anti-money laundering standards available in any location in which it operates. That means, at a minimum, all of HSBC worldwide must adhere to U.S. anti-money laundering standards. We could not have accomplished this by obtaining a conviction at trial. This provision of the DPA represents a significant benchmark for future anti-money laundering compliance and enforcement.

In addition, the other terms of the DPA are perhaps the most stringent ever imposed on a financial institution. The DPA has a five-year term, which is among the longest that has ever been imposed on a financial institution for anti-money laundering or sanctions violations. This term reflects the seriousness of HSBC’s conduct and allows for an extended period during which the government will closely monitor HSBC. HSBC is also required to retain and pay for an independent monitor to ensure that remedial measures are implemented. The DPA also ensures that HSBC will continue to cooperate with the government in any criminal investigation for the term of the agreement. Additionally, HSBC was required to forfeit \$1.256 billion, which was the largest ever forfeiture in a bank prosecution to that point.

- d. If confirmed, will you commit to imposing harsher penalties against entities that willfully ignore interests of national security and use American citizens’ personal information to perpetuate fraud?

RESPONSE: If confirmed as Attorney General, I will ensure that the prosecution of perpetrators of identity theft is a significant priority of the Department and that all appropriate penalties are pursued, particularly where interests of national security are implicated.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015**

QUESTIONS FROM SENATOR VITTER

1. On what statutory authority does the President, the Attorney General, or the Secretary of Homeland Security have the power to grant work authorization to illegal aliens?

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that this issue has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

2. What is the purpose of the Immigration and Nationality Act?

RESPONSE: Although as the United States Attorney for the Eastern District of New York I am not an expert in immigration law, I am aware that the Immigration and Nationality Act (INA) is the principal law governing immigration to the United States.

3. Why do you think Congress set numerical limitations on the number of visas for foreign nationals and guest workers?

RESPONSE: The Department of Justice does not administer visa programs. Because your question involves matters outside the purview of the Department of Justice's responsibilities and expertise, and this issue is not part of my practice as the United States Attorney for the Eastern District of New York, I respectfully recommend that you direct your question to the agencies responsible for administering visa programs.

4. Does hiring unauthorized workers lower wages for U.S. workers?

RESPONSE: Because your question involves matters outside the purview of the Department of Justice's responsibilities and expertise, and this issue is not part of my practice as the United States Attorney for the Eastern District of New York, I respectfully recommend that you direct your question to the U.S. Department of Labor.

5. All other things being equal, doesn't increasing the labor supply depress wages for workers?

RESPONSE: Because your question involves matters outside the purview of the Department of Justice's responsibilities and expertise, and this issue is not part of my practice as the United States Attorney for the Eastern District of New York, I respectfully recommend that you direct your question to the U.S. Department of Labor.

6. Where does the executive branch derive its authority to create a “deferred action” program for an entire class of illegal aliens?

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that this issue has been addressed in a brief filed by the Department. I would respectfully refer you to the Department’s brief and to the Office of Legal Counsel’s published opinion for a full discussion of this issue.

7. Where in the law does it grant the President, Attorney General, or Secretary of Homeland Security the authority to parole into the United States an entire class of illegal aliens?

RESPONSE: My understanding is that the deferred action guidance issued by the Department of Homeland Security does not rely on DHS’s parole authority. Further, my understanding is that that guidance does not grant deferred action on a systematic basis. Instead, it establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation’s immigration laws in order to prioritize the limited resources afforded to the agency.

8. How do you justify the administration’s use of parole authority in the November 2014 executive action for a class of millions of illegal aliens with a clear statutory grant of authority to only grant parole on a “case-by-case basis”?

RESPONSE: My understanding is that the deferred action guidance issued by the Department of Homeland Security does not rely on DHS’s parole authority. Further, my understanding is that that guidance does not grant deferred action on a systematic basis. Instead, it establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation’s immigration laws in order to prioritize the limited resources afforded to the agency.

9. In 2013, a Ninth Circuit Court of Appeals Judge wrote in a published opinion that “There is an epidemic of *Brady* violations abroad in the land.” Judge Kozinski was of course referring to the principal identified in *Brady v. Maryland*, 373 U.S. 83, a 1963 case in which the Supreme Court held that government prosecutors are required to turn over all exculpatory evidence to the Defendants.

- a. Do you agree with the holding of *Brady v. Maryland*?

RESPONSE: Yes.

- b. Does the Circuit Court of Appeals' finding that there is an epidemic of Brady violations trouble you?

RESPONSE: As United States Attorney and a federal prosecutor, I take very seriously the obligation not only to vigorously prosecute criminal cases but also to zealously uphold defendants' rights in the criminal justice system. Both the actual fairness of criminal trials and their perceived fairness are critically important. *Brady* violations undermine a defendant's right to a fair trial and can undermine the public's perception of the fairness of the criminal justice process.

- c. Do you agree there is an epidemic of *Brady* violations?

RESPONSE: No, although I believe even one *Brady* violation is too many.

- d. What steps will you take to address this epidemic of *Brady* violations by Department of Justice prosecutors?

RESPONSE: If I am confirmed as Attorney General, I will take very seriously the professionalism of all attorneys and staff of the Department of Justice. The Department's dedicated career professionals devote their lives to keeping our communities safe and to ensuring that criminals are brought to justice honorably and ethically. If a *Brady* violation occurs, the personnel responsible must be held accountable.

10. *Brady* is founded on the constitutional right to due process, and courts have long held that defendants sued by the government in civil proceedings are entitled to due process.

- a. Do you agree that the Department of Justice's obligations to safeguard the constitutional rights of defendants under *Brady* should apply equally in civil matters prosecuted by the Department of Justice? If not, why not?

RESPONSE: As I understand the law, federal courts have in only a few instances found *Brady* applicable in civil proceedings, such as in unusual cases where the potential consequences "equal or exceed those of most criminal convictions." *Demjanuk v. Petrovsky*, 10 F.3d 338, 50 (6th Cir. 1993). I agree that *Brady* should apply in such cases.

- b. As Attorney General, would you be willing to issue directives to Department of Justice prosecutors of civil matters to produce materials to the defense in accordance with *Brady v. Maryland*?

RESPONSE: If I am confirmed as Attorney General, in leading the Department, I will take appropriate actions to ensure that Department attorneys comply with the Constitution and the laws enacted by Congress as interpreted by the Supreme Court.

- 11. In a January 9, 2015 article written by George F. Will, a Pulitzer Prize winning Commentator for the Washington Post, entitled “Questions for Attorney General Nominee Loretta Lynch,” Mr. Will provided a number of questions you should answer during the confirmation process. Please answer these specific questions from Mr. Will:

- a. Many progressives say that the 34 states that have passed laws requiring voters to have a government-issued photo ID are practicing “vote suppression.” Does requiring a photo ID at airports constitute “travel suppression”?

RESPONSE: I am not specifically familiar with the rules regarding all of the permissible types of identification that may presently be required at airports. However, we have many instances of violence, and credible threats of violence, directed towards airports and airplanes. As a New Yorker, I know first-hand the loss of life that terrorists have caused through plane hijackings. There is no doubt that certain security measures are imperative.

- b. Visitors to the Justice Department are required to present photo IDs. Do you plan to end this “visit suppression”?

RESPONSE: As with airports, we have many instances of violence, and credible threats of violence that have been directed towards government buildings, including the horrific attack on the Alfred P. Murrah Federal Building in Oklahoma City. There is no doubt that certain security measures are imperative.

- 12. Hans von Spakovsky, senior legal fellow at the Heritage Foundation’s Edwin Meese III Center for Legal and Judicial Studies, former member of the Federal Election Commission, and former Counsel to the Assistant Attorney General for Civil Rights at the U.S. Department of Justice, and J. Christian Adams, former counsel for the Voting Rights Section at the U.S. Department of Justice and blogger for PJ Media, wrote a January 27, 2015 article in the National Review entitled “The Questions Loretta Lynch Needs to Answer”. Please answer the following questions from their article:

- a. Do you “believe, as Eric Holder does, that voter-ID laws are racist?”

RESPONSE: I cannot speak to Attorney General Holder’s views, nor do I have any categorical views on these issues in the abstract. My general understanding is that the Department considers

questions of the validity of voting practices, such as state voter identification laws, based on the particular requirements of the federal law being enforced, based on the particular facts of the practice being investigated, and based on the particular law and facts in the jurisdiction.

As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

The analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

- b. Do you “disagree with the Supreme Court’s decision upholding such laws in 2008 in *Crawford v. Marion County*?”

RESPONSE: The decisions of the Supreme Court represent the law of the land.

- c. Do you share Attorney General Holder’s apparent view that federal anti-discrimination laws such as the Voting Rights Act do not need to be executed in a race-neutral manner?

RESPONSE: I cannot speak to Attorney General Holder’s views. If I am confirmed as Attorney General, I am committed to enforcing all the federal laws within the Department’s jurisdiction, including the Voting Rights Act, according to their terms, in an even handed manner.

13. In your legal opinion, is there an allowable method for states to require photographic identification in order to vote?

RESPONSE: As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

The analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

14. Do you oppose state laws requiring a potential voter to present valid, government-issued photographic identification in a vacuum?

RESPONSE: As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

The analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

15. Does in-person voter fraud exist?

RESPONSE: I am not personally familiar with the specifics of studies regarding these issues. Accordingly, I do not have any categorical views on these issues in the abstract.

16. Is voting essential to a democracy?

RESPONSE: Yes. Enforcing the federal laws that protect the right of our citizens to vote and protect of integrity of our elections are both core missions of the Department of Justice.

17. Should legal permanent residents have the right to vote in federal elections?

RESPONSE: Aliens do not have any federal right to vote in our federal elections. Various federal statutes enacted by Congress provide criminal penalties for false assertions of United States citizenship in connection with registration and voting, as well as criminal penalties for aliens voting in elections for federal office. If I am confirmed as Attorney General, I am committed to enforcing those statutes in an even-handed manner.

18. Should felons who have served their sentences have the right to vote in federal elections?

RESPONSE: This presents legal questions that I have not studied in depth, but my understanding is that the laws regarding the eligibility to vote of felons who have served their sentences vary from state to state.

19. Should undocumented persons in the country without felony convictions have the right to vote in federal elections?

RESPONSE: Aliens do not have any federal right to vote in our federal elections. Various federal statutes enacted by Congress provide criminal penalties for false assertions of United States citizenship in connection with registration and voting, as well as criminal penalties for aliens voting in elections for federal office. If I am confirmed as Attorney General, I am committed to enforcing those statutes in an even-handed manner.

20. As Attorney General, will you commit to equal investigation and enforcement of Section 7 and Section 8 of the National Voter Registration Act (NVRA)?

RESPONSE: The Department enforces a number of federal voting rights statutes, including the NVRA. If I am confirmed as Attorney General, I am committed to enforcing all of those laws in an even-handed manner.

21. In 2013, the Department of Justice filed a lawsuit against Louisiana's school voucher program, known as the Louisiana Scholarship Program, alleging that the program violated federal desegregation orders resulting from the 1975 case *Brumfield v. Dodd*. The Department argued that allowing voucher students to transfer out of their public schools would disrupt the racial balance in public school systems that the desegregation orders are meant to protect. However, subsequent research commissioned by Louisiana found that in the majority of districts the movement of students improved or did not affect racial balance. In districts where the program had a negative impact, the effect was "miniscule". Nevertheless, the Eastern District of Louisiana ruled that Louisiana must provide detailed information to the Department of Justice on each student applicant at least 10 days before the vouchers are awarded. Please answer the following questions detailing how this information will be used if you are confirmed:

- a. Will the Department of Justice use this information to prevent students from participating in the voucher program, even in cases where the program would have little to no effect on racial imbalance in the public school, simply to promote the anti-school choice views of President Obama and the Department of Education?

RESPONSE: I cannot comment on the specifics of *Brumfield v. Dodd* because it is my understanding that it is in active litigation. It is also my understanding that the Department has not taken a position against school voucher programs. That would continue to be my position if I am confirmed as Attorney General.

- b. Will you promise that the Department will not block students from participating in the Louisiana Scholarship Program, which is meant to give underprivileged

students, many of whom are African-American, access to quality schools in accordance with federal law and judicial precedents?

RESPONSE: Every child should have access to a good education, in a quality school, regardless of his or her race. The Department has worked for decades to ensure that every student is able to enjoy the fundamental rights guaranteed by the Constitution and the Supreme Court's decision in *Brown v. Board of Education*.

22. The Treasury Department and the federal banking regulators reported that many banks are engaging in a process called "de-risking," which can be defined as banks ending services to existing businesses that might prevent a risk of scrutiny and regulations. Usually these businesses are completely legal and engaged in legitimate business such as short-term lending, check cashing, tobacco sales or legal sales of firearms.

a. What is your view on this practice?

RESPONSE: I believe it is important for lawful businesses to be able to have access to our nation's banking system, and that banks should assess risk on an individualized, rather than categorical, basis. As the United States Attorney for the Eastern District of New York, I have not had occasion to gain personal familiarity with the "de-risking" process you describe, but, if I am confirmed as Attorney General, I commit to learning more about and working with Congress on these issues.

b. Should banks be terminating relationships with these types of legal businesses?

RESPONSE: As noted above, I believe it is important for lawful businesses to be able to have access to our nation's banking system, and I agree with banking regulators that banks should make case-by-case determinations rather than assess risk on a categorical basis.

23. What is the appropriate role of the Department of Justice in deciding which legal businesses should have access to financial institutions and which should not and how will you make that judgment if you are confirmed?

RESPONSE: The role of the Department of Justice is to enforce the law and as a career prosecutor and the United States Attorney for the Eastern District of New York, I can assure you that I, and my fellow prosecutors and law enforcement partners, take this role seriously. Our job is to investigate specific evidence of unlawful conduct and enforce the law. Our cases should target businesses that are violating the law, not those acting lawfully.

I also know from my time as United States Attorney that the Department's professionals work every day to uphold the law and protect the American people. I believe that, to ensure that our efforts are effective, the Department also must make sure to prevent any potential misunderstanding of its efforts that could be detrimental to lawful businesses. If confirmed as

Attorney General, I will make clear that it is imperative that we inform financial institutions that any investigations of financial institutions are based on specific evidence that a financial institution is breaking the law, and not on the institution's relationships with lawful industries or companies.

24. In a Senate Judiciary Committee hearing Attorney General Holder was quoted as saying, "I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if we do prosecute — if we do bring a criminal charge — it will have a negative impact on the national economy, perhaps even the world economy." Do you agree with Attorney General Holder that some companies be exempted from criminal prosecution due to their impact on the nation's financial system or economy?

RESPONSE: I believe that no individual or company, no matter how large or how profitable, is above the law, and none is categorically exempt from prosecution. Rather, when evidence suggests beyond a reasonable doubt that a company or individual has engaged in criminal conduct, the Department will prosecute to the full extent of the law, consistent with longstanding Department of Justice policy. As with all cases, the Department considers the strength of the evidence and other long-standing policy considerations (*see, e.g.*, United States Attorney's Manual (USAM) 9-28.300) in determining whether to prosecute a financial institution.

25. In advance of your hearing you failed to include on your questionnaire an interview in which you defended a settlement you reached with a megabank. This bank was accused of allowing dangerous Mexican drug cartels to launder money through their bank. In a deal you orchestrated the bank paid a fine instead of being prosecuted. Why did you omit this interview from your questionnaire? How will you handle oversight of this settlement given the role you played creating it?

RESPONSE: I believe the exchange you reference occurred in connection with a press conference, which the Department counsels nominees should not be considered interviews for the purpose of the Senate Judiciary Questionnaire. Nonetheless, I am happy to discuss below the HSBC matter you have cited. On December 11, 2012, the Department filed an information charging HSBC Bank USA with violations of the Bank Secrecy Act and HSBC Holdings with violating U.S. economic sanctions (the two entities are collectively referred to as "HSBC"). Pursuant to a deferred prosecution agreement ("DPA"), HSBC admitted its wrongdoing, agreed to forfeit \$1.256 billion, and agreed to implement significant remedial measures, including, among other things, to follow the highest global anti-money laundering standards in all jurisdictions in which it operates. In order to ensure that HSBC fulfills its commitments, the Department required the installation of a corporate monitor, who supervises HSBC's implementation of remedial measures and evaluates HSBC's ongoing compliance with anti-money laundering requirements and U.S. economic sanctions. As the United States District Judge who approved the deferred prosecution found, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for

it accomplishes a great deal.” The Department will monitor compliance with the DPA and act appropriately to ensure implementation.

I want to reiterate, particularly in the context of recent media reports regarding the release of HSBC files pertaining to its tax clients, that the Deferred Prosecution Agreement reached with HSBC addresses only the charges filed in the criminal information, which are limited to violations of the Bank Secrecy Act for failures to maintain an adequate anti-money laundering program and for sanctions violations. The DPA explicitly does not provide any protection against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA explicitly mentions that the agreement does not bind the Department’s Tax Division or the Fraud Section of the Criminal Division.

26. The Health Insurance Portability and Accountability Act (HIPAA) exists primarily to protect patients’ right to privacy and requires abortion clinics to acquire a signed disclosure before releasing any information about the patient to anyone else, especially the public. There are several cases in which abortion clinics have clearly broken this law. In light of these serious violations of HIPAA, aggressive action must be taken against the clinics, and they must be held accountable for their illegal practices. It is all too common that clinics are not penalized for these types of violations. I understand that the number of HIPAA violation complaints received by the Department of Health and Human Services has increased since 2013, according to an article from InformationWeek published last July 8, 2014 titled “HIPAA Complaints Vex Health Care Organizations.” The article states: “Jerome Meites, an HHS chief regional civil rights counsel, warned late last year that the government would pursue organizations more aggressively for HIPAA violations. Audits, which began in 2013, will continue through 2015, he said. In addition, states enacted their own data security and enforcement policies. Of the approximately 90,000 complaints received through 2013, only 32,000 fell under the jurisdiction of the HHS Office of Civil Rights. Of these, 22,026 required corrective action, while investigation of 9,899 found no violation. Of the 521 complaints the OCR referred to the Department of Justice for potential criminal justice, the DOJ has agreed to pursue only 54 of them.”
- a. If you become the Attorney General, what role will the DOJ play in prosecuting these violations?
 - b. Will you prosecute more of these cases than the DOJ has in previous years?
 - c. Will you make protecting patients privacy through pursuing HIPAA violators a priority of yours, should you be confirmed as Attorney General?

RESPONSE: Protection of patient privacy under HIPAA remains of paramount concern to the Department, and HIPAA criminal violations have been and will continue to be prosecuted when warranted. It is my understanding that criminal matters have been referred to the Department by the Secretary of Health and Human Services (HHS) as well as the Federal Bureau of Investigation (FBI). In addition to prosecution, the Department is committed to offering training

and guidance about HIPAA. After the 2003 effective date of the original HIPAA medical privacy rules, the Department provided training for prosecutors and agents regarding the HIPAA criminal statute and continues to provide periodic updates regarding HIPAA prosecutions and other medical privacy statutes through the United States Attorney's bulletin and training sessions. If I am confirmed as Attorney General, the Department will continue its commitment to protecting patient privacy under my stewardship.

27. As you know, U.S. Magistrate Judge Gary Brown, who oversees the FEMA Sandy claims case of Deborah Raimy and Larry Raisfeld v. Wright National Flood Insurance Co. (14-mc-41 and Case 2:14-cv-00461-JFB-SIL), recently issued a Memorandum and Order dated November 7, 2014 (14-CV-461, Docket Entry No. 82 & 14-MC-41, Docket Entry No. 637) exposing insurance fraud by a fraudulent engineering company hired to deny a Sandy victim's claim. Judge Brown found evidence that the fraud may be "widespread" and the conduct "outrageous," and also found indications that the fraud may be "widespread" practices. He found the fraud so bad that he sanctioned the defense attorneys for not disclosing the evidence. (*See attached Order – Doc #35*) The Judge ordered the WYOs in the litigation to turn over engineering reports in approximately 1,000 cases. The U.S. Senators from New York and New Jersey have demanded the same fraud investigation ordered by this Federal Judge. One would think that with a NY Federal Judge's ruling exposing widespread insurance fraud and both NY Senators calling for a document disclosure, the New York U.S. Attorney would weigh in. In a shocking move, as the New York U.S. Attorney, you filed a brief to try to block the document disclosure. In this brief, you argue that the documents which may reveal the fraud are "unnecessary" and "unduly burdensome," and asked the court to amend the ruling to end the inquiry with the one case of discovered fraud. (*See attached FEMA Motion to Set Aside Doc #36*). The move is nothing short of a cover-up. This is even more striking given the fact that we learned FEMA received incontrovertible evidence of this fraud in another case over a year ago and intentionally ignored it. (*See attached letter from Mostyn to Judge Brown dated 12/1/14*). I find it very odd that the U.S. Attorney in New York would file a motion to limit discovery of widespread insurance fraud perpetrated against Long Island residents in Sandy.

- a. Upon learning of the fraud discovered by a Federal Judge, why would your office seek to limit the investigation into this potential Federal criminal activity?

RESPONSE: My Office has been a leader in aggressively prosecuting disaster fraud committed in the wake of Hurricane Sandy, charging eight defendants with attempting to illegally exploit the horrific damage caused by that superstorm. In addition, allegations related to the possibility of fraud identified in Magistrate Judge Brown's November 7, 2014 Memorandum and Order are being evaluated by the Office of Inspector General at the Department of Homeland Security.

Upon entry of the November 7, 2014 Memorandum and Order, my Office worked closely with FEMA to achieve compliance and obtain the additional information from third party contractors the court had ordered to be disclosed. On November 10, 2014, FEMA contacted its Direct Servicing Agent and requested it to obtain the information described in the order from its

contractors. Because FEMA lacks control of the third party contractors and was relying solely on voluntary cooperation of the third party contractors to achieve compliance, on November 21, 2014, FEMA also sought reconsideration and objected to the order. On December 8, 2014, Magistrate Judge Brown issued a clarification order. The December 8th Order directed that, to the extent that third party contractors did not voluntarily provide additional information, FEMA was authorized to issue subpoenas to the firms to compel production of the materials. Consistent with the December 8th Order, on December 12, 2014, my Office issued subpoenas to third party contractors that did not voluntarily comply with the court's order and then produced all of the information it obtained to the plaintiffs. My Office was thus able to ensure full compliance with the court's order.

b. Do members of your staff know about this fraudulent activity?

RESPONSE: Members of my staff work with FEMA in identifying allegations of fraudulent activity that should be referred to the Office of Inspector General at the Department of Homeland Security.

c. Do you have plans to pursue these cases of fraud now that you know about them? If no, then what is preventing you from going after possible corruption and fraud from the insurance companies that are taking advantage of the victims of this horrible natural disaster?

RESPONSE: These are matters that are currently under investigation and in active litigation, so I cannot comment on them. As set forth above, my Office has been a leader in prosecuting disaster fraud committed in the wake of Hurricane Sandy.

d. Do any of your colleagues, employees, or attorneys at the U.S. Attorney's office for the Eastern District of New York have pre-existing relationships with officials and attorneys for the WYO insurance companies that have been accused of committing fraud? Please submit their names, positions, and who it is they know representing the WYO companies.

RESPONSE: I am unaware of any pre-existing relationships of employees of my Office with officials and attorneys for the WYO carriers.

28. According to the Treasury Inspector General for Tax Administration (TIGTA), the Internal Revenue Service (IRS) used "inappropriate criteria to identify tax-exempt applications for review," as early as March of 2010.^[1] Subsequently, the Department of Justice, numerous Congressional Committees, and TIGTA have all initiated additional investigations into IRS improprieties, which the IRS has used to justify not disclosing

^[1] "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review", 5/14/13, <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>, pg. 30

information related to public FOIA requests^[2] and which have brought to light attempts by the IRS to avoid public scrutiny of their actions.^[3]

- a. Considering that the IRS was targeting organizations on a content-specific basis with regards to their potential political speech, do you think it's important for any subsequent investigation to be conducted in a neutral and objective manner?

RESPONSE: I believe that it is critically important that all investigations by the Department of Justice are conducted in a fair, objective, professional, and impartial manner, without regard to politics or outside influence. We must follow the facts wherever they lead, and must always make our decisions regarding any potential charges based upon the facts and the law, and nothing more. That is what I have always done as a United States Attorney, and it is what I will do if I am confirmed as Attorney General.

- b. In response to a question from Senator Cruz on appointing a special prosecutor to investigate the IRS targeting allegations, you responded "(m)y understanding is that the matter has been considered and the matter has been resolved."^[4] Considerations of the moment aside, do you believe the potential political motivations of civil service officials and employees in carrying out their duties are sufficient justification to appoint a special prosecutor? If not, why?

RESPONSE: In the many years that I have worked with at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, "[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges." See Memorandum of The Attorney General to All Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a

^[2] Defendant's Opposition to Plaintiff's Motion Seeking Discovery, *Judicial Watch, Inc. v Internal Revenue Service*, Case No. 1:13-cv-1559-EGS-JMF, 10/17/14, <http://www.judicialwatch.org/wp-content/uploads/2014/11/JW-v-IRS-01559-def-oppo.pdf>, pg. 4

^[3] *Lois Lerner cautioned against email chatter amid lawmaker probes*, 7/9/14, <http://www.politico.com/story/2014/07/lois-lerner-irs-lawyer-email-108722.html>

^[4] *Ted Cruz Leads the New Conservative Crusade Against the IRS*, 1/28/15, <http://www.bloomberg.com/politics/articles/2015-01-29/ted-cruz-leads-the-new-conservative-crusade-against-the-irs>

Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

- c. Do you believe the investigation of the IRS targeting of nonprofits would be better conducted by a single party, organization, or office, like a special prosecutor?

RESPONSE: As noted above, it is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

29. November 5, 2014, during a White House press briefing, President Obama, indicated his intention to enter into discussions with congressional leaders to develop a new Authorization of Use of Military Force (AUMF) to specifically target the Islamic State, in order to "right-size and update whatever authorization Congress provides to suit the current fight, rather than previous fights" authorized by the 2001 and 2002 AUMFs. During his 2015 State of the Union, Obama also called on Congress to pass a resolution to authorize using military force against the extremist group Islamic State of Iraq and Syria (ISIS).

- a. Do you support further engagement by the U.S. Congress to address an updated Authorization of Use of Military Force (AUMF)?

RESPONSE: I have not had occasion as United States Attorney to consider this question, but if I am confirmed as Attorney General, I would support the President's efforts to engage with Congress on this issue.

30. The United States Congress is reviewing consideration of providing President Barack Obama with an updated Authorization for Use of Military Force (AUMF) against the Islamic State and related terrorists. In 2010, court rulings such as *Al-Aulaqi v. Obama* concluded that the questions raised fell under the political question doctrine, and found in particular that [j]udicial resolution of the 'particular questions' posed would require the court take into account complex, military, strategic, and diplomatic considerations – e.g. to “assess the merits of the President's (alleged) decision to launch an attack on a foreign target” – that it was simply not competent to handle. Handling these questions is something that Congress is equipped, under Article I, Section 8, Clause 1-15, Section 9, and Section 10 of the Constitution to do.

- a. Given the surrounding legal questions, do you agree that in an effort to better "right-size" and update whatever authorization (AUMF) Congress provides to the President, that the Senate Judiciary Committee should have a direct role to examine its tie-ins, in coordination with other relevant Committees, in crafting any new proposal to update the AUMF against the Islamic State, and its potential impacts on U.S. citizens as it is considered?

RESPONSE: I have not had occasion as United States Attorney to consider this question, but I agree with the President that Congress has an important role to play. I would defer to Congress on how these important issues should be deliberated within the legislative branch.

31. My office has received information that a division within the DOJ working with the Institute of Electrical and Electronics Engineers Standards Association (IEEE-SA), is in the process of drafting a Business Review Letter (BRL), in support of a policy which will change how wireless (Wi-Fi) technology operates, and how Wi-Fi research is conducted and could potentially impact the competitiveness of American innovators. In 2006 a PAE suit almost caused the shutdown of BlackBerry wireless service. Since then, according to the White House Patent Assertion and U.S. Innovation Executive document, published in 2013, technology companies have spent billions in large part to prevent patent suits from competitors. I have also seen various reports that efforts by intellectual property legal experts to discuss the negative impacts of this policy change with the DOJ have been refused. While I support the DOJ's review of whether current policy is consistent with U.S. antitrust laws, it is imperative that any action taken by the DOJ does not unintentionally undermine the rights and competitiveness of U.S. inventors.

- a. Can you provide an update to my office regarding the DOJ's position and plan to move forward with a BLR that appears to be contrary to U.S. law, and on what appears to be a *de facto* change of U.S. policy without prior backing from the Executive or Congress, and based purely on the DOJ Antitrust Division staff opinion?
- b. Has the DOJ in its BLR reviewed the fact that the Board of Directors of IEEE-USA, the US-based branch of the organization, voted on November 21 expressing its concerns about the proposed policy changes?

RESPONSE: It is my understanding that on February 2, 2015, the Department issued a business review letter to the Institute of Electrical and Electronics Engineers, Inc. (IEEE) announcing that the Department had no present intention to challenge under the antitrust laws an IEEE proposal to clarify the terms under which holders of patents essential to IEEE standards commit to make licenses available for use in implementing IEEE standards. That letter is available at <http://www.justice.gov/atr/public/busreview/311470.htm>. My understanding is that the Antitrust Division engaged in a thorough review, including reviewing submissions of, and numerous meetings with, both proponents and opponents of the proposed policy revision, prior to issuing the business review letter.

32. The Computer Crime and Intellectual Property Section, or CCIPS, implements DOJ's strategies for enforcing the theft of intellectual property (IP). Established in 1991 with only five prosecutors, CCIPS plays a crucial role in protecting our nation's IP. More than 20 years later, it is safe to say computer and intellectual property theft has become more sophisticated, consisting of international networks targeting U.S. innovations and content. The Computer Hacking/Intellectual Property (CHIP) Unit is another tool in the Department's chest to prosecute cybercrimes and assist in investigations.

- a. If confirmed, will you commit to this Committee that you will ensure CCIPS and the CHIP Units are operating at full strength with the necessary resources to carry out its missions?

RESPONSE: I appreciate the opportunity to address the important, and often challenging, task of protecting the intellectual property ("IP") of American creators and businesses. As your question properly acknowledges, the protection of IP is increasingly linked with our ability to secure computer systems and to protect content online. Given the importance of this issue to the Department, if confirmed as Attorney General I look forward to supporting the continued work of CCIPS and the CHIP units both through staffing and increased technical capabilities. I also would work with Congress to ensure that the Department is able to address future threats in this area, particularly in developing the tools and resources to address the challenge posed by the cross-border nature of IP and computer crime.

My experience in the Eastern District of New York has shown that the CHIP program—a network of experienced and specially-trained federal prosecutors who aggressively pursue computer crime and IP offenses—is an essential part of the Department's work in this area.

CHIP attorneys are responsible for prosecuting computer crime and IP offenses; serving as the district's legal counsel on matters relating to those offenses, and the collection of electronic evidence; training prosecutors and law enforcement personnel in the region; and conducting public and industry outreach and awareness activities. In my district, as in many other districts confronting significant cybercrime and intellectual property crime threats, our CHIP attorneys are located within a larger unit with cybercrime responsibilities to ensure that there are sufficient resources to handle what may be complex and long-term cases. Specifically, our CHIP unit is located in our National Security and Cybercrime Section, and the prosecutors in that section are trained and experienced with both the cyber tools necessary to prosecute modern crimes and the national security tools necessary to provide the appropriate response when national security actors such as nation states or terrorists may be involved. I thus know from personal experience that the CHIP network is very important to the Department's efforts to deter IP and computer crimes, and I would fully support its efforts if confirmed as Attorney General.

My Office has also been fortunate to work together with CCIPS on a number of important cybercrime and IP cases. As you note, CCIPS was created at a time when computer technology and the global markets for digital IP were quite new. Today, however, computer crimes and modern IP property crimes are often extremely sophisticated and difficult to address. Successfully prosecuting those crimes require prosecutors who are not only versed in the specialized areas of the law, but who also understand the specialized factual contexts in which the crimes occur. Even in an Office such as mine which is home to an entire unit of prosecutors with those skills, we have found that collaborating with CCIPS on our cases adds value in many areas. For example, we collaborated closely with CCIPS on a recent case involving the large-scale manufacture of consumer products on Long Island. This case involved an initial seizure of more than four semi-trailer truckloads of evidence in five locations, including counterfeit ChapStick, Johnson's Baby Oil, Vicks VapoRub, Vicks Inhaler, Vaseline, Always sanitary pads, and other over-the-counter cold medicines and painkillers. My Office also regularly capitalizes on training programs established and run by CCIPS to ensure that our prosecutors stay on the cutting edge legally and technologically. Finally, CCIPS also contains a core group of computer forensics experts in its Cybercrime Lab who provide digital evidence forensics, as well as training and advice to prosecutors across the country and law enforcement agencies around the world. I know that assistance provided by the Cybercrime Lab has been crucial in a broad range of cases, from traditional cybercrime to terrorism. This important mission is critical to the Department's overall success in addressing the threat of computer and IP crime, and if confirmed, I would work with Congress to assure that CCIPS has the necessary resources to accomplish it.

33. During your confirmation hearing, you stated that you do not support the legalization of marijuana. As you may know, DC is continuing to proceed with implementation of the initiative even though language preventing DC from moving forward with legalization efforts was included in the bill.
 - a. What is your position on DC's Initiative 71 given the passage of HR 83, the Consolidated and Further Continuing Appropriations Act, which was signed into law by the President on December 16, 2014?

RESPONSE: As the United States Attorney for the Eastern District of New York, I am not familiar with the details of the legislation you have cited. As I noted during my testimony before the Committee, it is not the position of the Department of Justice to support the legalization of marijuana, nor would it be the position if I am confirmed as Attorney General.

- b. As the chief law enforcement official of the Executive Branch, will you enforce federal law including the Controlled Substance Act and the Anti-Deficiency Act in DC given marijuana is a Schedule I controlled substance and not subject to the Cole Memo since DC is not a state? If not, why not?

RESPONSE: As United States Attorney, and if I am confirmed as Attorney General, I am committed to enforcing the Controlled Substances Act (CSA). The Cole Memorandum sets out eight priority areas for federal marijuana enforcement, one of which is preventing the diversion of marijuana from states where it is legal under state law in some form to other states where it is not. In addition, the Cole Memorandum expressly states that the federal government reserves the right to challenge a state marijuana law if that state does not implement strong and effective regulatory and enforcement systems that will address the threat that state law could pose to public safety, public health, and other law enforcement interests. These same considerations and limitations apply in the District of Columbia. The Department's focus is on applying its limited investigative and prosecutorial resources to enforcing the CSA in a manner that addresses the most significant threats to public health and safety, as discussed in the Cole memorandum.

34. A *U.S. News & World Report* article dated August 27, 2014 titled "School Prayer Fight Begins Anew: Tennessee and North Carolina implement religious expression laws in public schools," highlights the increasing number of attacks on the presence of prayer in public schools by special interest advocacy groups like Americans United for Separation of Church and State. Several states, including Louisiana and North Carolina, have passed laws to clarify students' rights to engage in prayer and religious activity in school. Furthermore, many states have laws that allow the school day to start with a moment of silence for students to quietly pray to themselves, and even these laws are facing aggressive action from anti-prayer groups.

- a. In your opinion, should American public schools begin every day with a prayer?

RESPONSE: School prayer is not an area that I have studied closely. I know that the First Amendment protects religious freedom through the Establishment Clause, which protects against government interference and overbearing in religious matters, and the Free Exercise Clause, which protects the right of individuals and religious communities to pursue their faiths as their consciences lead them. The First Amendment's Free Speech Clause also provides protections to individuals and religious communities to express their faiths.

It is my understanding that Supreme Court precedent establishes the principle that public schools may not sponsor official school prayer, may not endorse or prefer any particular religion, and may not prefer religion over nonreligion. I also understand that the Supreme Court has recognized a critical difference between school-sponsored religious speech, which the Establishment Clause proscribes, and student religious speech, which the Free Exercise Clause and Free Speech Clause protect.

- b. Should public schools permit the allowance of a moment of silence at the beginning of the day so that students can pray quietly to themselves?

RESPONSE: It is my understanding that students have the right to pray, either alone or with other students, before, during or after school on the same basis that students are permitted to gather for other expressive purposes.

- c. If you are confirmed as U.S. Attorney General, would you assist secular advocacy groups in attacking states' laws that clarify students' rights to engage in prayer and religious activity in school?

RESPONSE: It is my understanding that the Department, through its Civil Rights Division, enforces Title IV of the Civil Rights Act of 1964, which permits the Department to bring suit where a school board has denied a student or students "equal protection of the laws" on the basis of religion. I understand that this provision is typically invoked when a student suffers harassment on the basis of religion, and does not ordinarily arise in the context of prayer. The only cases relating to student prayer or other student expression of religious belief or devotion in public schools of which I am aware of Department involvement in recent years are briefs filed by the Department in support of a student group in Pennsylvania that wanted to hold a Bible study and prayer group during an activities period, and a brief filed in support of a student who wished to sing a religious song in an evening talent show sponsored by the school.

- d. What will you do to protect states' laws from secular attacks on students' rights to prayer in school?

RESPONSE: If I am confirmed as Attorney General, I will protect constitutional guarantees to freedom of religion.

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015

QUESTIONS FROM SENATOR VITTER

In your response to the Senate Judiciary Committee's "Questions for the Record," you explicitly noted that you were answering questions regarding the HSBC Deferred Prosecution Agreement (DPA) which you negotiated in lieu of criminal prosecution "in the context of recent media reports regarding the release of HSBC files pertaining to its tax clients." The media reports may be recent, but the knowledge of HSBC shielding clients from their tax liabilities was known to the U.S. Department of Justice at least as early as April 2010. Reports of these serious violations of U.S. law are nearly five years old, yet no criminal charges have ever been brought against HSBC for the alleged tax evasion scheme under your leadership of the Eastern District of New York.

- 1) When did the U.S. Department of Justice receive the leaked information from French authorities detailing HSBC's scheme to shield its clients from their tax liabilities?

RESPONSE: During the course of the investigation of HSBC for Bank Secrecy Act and sanctions violations, I do not recall reviewing or being aware of the information reportedly provided to French authorities and have no knowledge of when such information may have been provided to the Department.

- 2) When did you personally become aware of the HSBC leaked information detailing the tax evasion scheme?

RESPONSE: I was not aware of the HSBC leaked information prior to the execution of the Deferred Prosecution Agreement (DPA), and only learned generally about the existence of these documents through media reports.

If the media reports are correct, the U.S. Department of Justice received this information as early as 2010, yet in 2012 you negotiated a Deferred Prosecution Agreement with HSBC to avoid criminal prosecution only for the crimes of money laundering and facilitating transactions with countries sanctioned by the U.S. It has been reported that you had full prior knowledge of HSBC's alleged earlier fraud and tax evasion violations.

- 3) Why did you choose not to immediately prosecute?

RESPONSE: First, it is important to note that the 2012 DPA did not charge HSBC with money laundering. Rather, as set forth in the Statement of Facts accompanying the 2012 DPA, our investigation centered on HSBC's failure to maintain an adequate anti-money laundering program, which violated the Bank Secrecy Act by creating a corporate environment that failed to stop others from laundering money through HSBC, as well as HSBC's sanctions-violating

conduct. Importantly, HSBC received no protection from prosecution for tax or fraud violations, or in fact, any conduct not described in the Statement of Facts. As set forth above, I was not aware of the HSBC leaked information prior to the execution of the DPA. I am confident that the Department will thoroughly review these allegations and will take whatever enforcement action is appropriate.

- 4) Given that HSBC admitted in the DPA to money laundering and conducting business with five countries sanctioned by the US, and given the strong evidence it also committed tax evasion, fraud and possibly other crimes, do you believe that HSBC's "penalty" truly fits the severity of its conduct against the US?

RESPONSE: The penalties and remedial measures encompassed in the DPA were appropriate to address the compliance failures and sanctions violations enumerated in the Statement of Facts. As the United States District Judge overseeing the case observed in his opinion approving the DPA, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for it accomplishes a great deal."

For example, the anti-money laundering provisions of the Bank Secrecy Act apply only to domestic U.S. financial institutions. The DPA requires HSBC to engage in anti-money laundering and compliance efforts beyond the requirements of the Bank Secrecy Act, and it requires such efforts worldwide, and that HSBC follow the highest or most effective anti-money laundering standards available in any location in which it operates. That means, at a minimum, all of HSBC worldwide must adhere to U.S. anti-money laundering standards. We could not have accomplished this by obtaining a conviction at trial. This provision of the DPA represents a significant benchmark for future anti-money laundering compliance and enforcement.

In addition, the other terms of the DPA are perhaps the most stringent ever imposed on a financial institution. The DPA has a five-year term, which is among the longest that has ever been imposed on a financial institution for anti-money laundering or sanctions violations. This term reflects the seriousness of HSBC's conduct and allows for an extended period during which the government will closely monitor HSBC. HSBC is also required to retain and pay for an independent monitor to ensure that remedial measures are implemented. The DPA also ensures that HSBC will continue to cooperate with the government in any criminal investigation for the term of the agreement. Additionally, HSBC was required to forfeit \$1.256 billion, which was the largest ever forfeiture in a bank prosecution to that point.

I want to reiterate that the DPA reached with HSBC addresses only the charges filed in the criminal information, which are limited to violations of the Bank Secrecy Act for failures to maintain an adequate anti-money laundering program and sanctions violations. The DPA explicitly does not provide any protection against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA expressly mentions that the agreement does not bind the Department's Tax Division or the Fraud Section of the Criminal Division.

- 5) As has been noted, the HSBC DPA that your office negotiated while you were U.S. Attorney for the Eastern District of New York does not preclude future prosecutions for HSBC's other criminal violations for tax evasion, fraud or for failure to meet its duties and responsibilities under the DPA, but why, nearly 5 years after the Department of Justice became aware of the tax evasion scheme, have no criminal charges been brought?

RESPONSE: I am not in a position to comment on the status of any tax-related investigation, or even to confirm or deny any particular investigation, but if I am confirmed as Attorney General, I look forward to learning more about the Department's enforcement efforts in this area.

The details of HSBC Money Laundering Deferred Prosecution Agreement has hardly been made public.

- 6) Exactly how much did HSBC profit from the transactions, loans, accounts, etc... associated with the money-laundering accusations included in the DPA?

RESPONSE: As set forth in the Statement of Facts accompanying the DPA, HSBC's anti-money laundering control failures and sanctions violations resulted in the bank processing hundreds of millions of dollars in tainted transactions. However, it is important to note that HSBC's profit from processing these transactions was a small fraction of the value of the transactions themselves. Indeed, the forfeiture judgment paid by the bank far exceeds the revenue and dramatically exceeds the profits that HSBC realized from processing these transactions.

- 7) Who in your office or at the Department of Justice determined the penalty paid by HSBC and how did they come to that amount?

RESPONSE: The forfeiture judgment was determined by career prosecutors in my office and within the Criminal Division of the Department of Justice. The penalty was based on the specific facts and circumstances of the case, including the value of the transactions that HSBC illegally processed and the scope and severity of the bank's misconduct.

- 8) What process(es) were used to ensure that the penalty matches the crime?

RESPONSE: As noted in my previous answer, the forfeiture penalty was assessed based on a thorough evaluation of the scope of HSBC's conduct and in conjunction with the other remedial measures encompassed in the DPA.

- 9) If the alleged identity theft took place, during the course of HSBC's participation in a money laundering scheme, have all affected persons been notified?

RESPONSE: I do not have sufficient information about the alleged identity theft to which you refer to comment on victim notification issues.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Question for the Record
Submitted February 9, 2015**

QUESTION FROM SENATOR WHITEHOUSE

1. As you know, the Senate Select Committee on Intelligence conducted an extensive investigation into the CIA's so-called "enhanced interrogation program." The resulting report – which includes a 499-page executive summary and a full history of the program that is more than 6,000 pages – documents in exhaustive detail how our nation came to employ techniques such as waterboarding, which you rightly characterized at your hearing as torture, and how certain officials lied to Congress and others about the use and effectiveness of these techniques. The report also discusses the role played by the Justice Department in this sorry episode, and in particular details how lawyers in the Office of Legal Counsel enabled the use of techniques that are indisputably torture. As a result, it is essential reading for anyone in a position of leadership at the Department. Will you commit that, if confirmed or prior to your confirmation, you will read the executive summary as well as those portions of the full report discussing the role of Justice Department attorneys?

RESPONSE: If confirmed, I will review the executive summary and other appropriate materials to help ensure that the Department lives up to the high standards of conduct and legal rigor that are essential to its mission.

Nicholas Quinn Rosenkranz
Professor of Law
Georgetown Law School
600 New Jersey Avenue, NW
Washington, DC 20001

July 29, 2015

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you again for the opportunity to express my views at the Judiciary Committee hearing on January 29, 2015, about the nomination of Loretta Lynch to be Attorney General of the United States.

As you requested in your letter of February 5, I write to respond to your written follow-up questions. I note that your questions primarily concern the Administration's assertion of executive privilege with regard to certain documents related to the Fast and Furious inquiry—a topic that I did not address in my testimony and that I have never addressed in my scholarship. I therefore offer only tentative answers to your questions. I have reproduced the questions below, and after each question I have written my answer.

SENATOR GRASSLEY: The Department has argued in the Fast and Furious litigation that executive privilege is more than just a Presidential privilege, but that it also establishes a Constitutional shield for the “deliberative process” of lower level agency officials. However, the deliberative process privilege is traditionally a common law doctrine and one of the exemptions in the Freedom of Information Act—not a Constitutional privilege of equal standing with the inherent Constitutional power of Congress to conduct oversight inquiries. Deliberative process also traditionally applies only to content that is deliberative and pre-decisional.¹ It does not shield material created after a decision is made, or that is purely factual material.

Moreover, the Attorney General has sought to use this exceedingly broad notion of privilege to justify withholding documents that he has stated *are not privileged*. On November 15, 2013, the Attorney General acknowledged in the Fast and Furious litigation that he was withholding documents responsive to the House subpoena that “do

¹ *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

not . . . contain material that would be considered deliberative under common law or statutory standards.”² Furthermore, the OLC opinion on the President’s assertion of executive privilege suggests that the privilege even applies to a document, “regardless of whether a given document contains deliberative material.”³

Yet, the Department *did* produce deliberative, pre-decisional material prior to the Feb. 4, 2011 gunwalking denial letter to me, despite its claim now that such material is privileged. The Department conceded that Congress had a clear interest in finding out whether officials knew before it was sent that the Feb. 4th letter was false. Thus, it provided pre-Feb. 4th material—even though it was pre-decisional and deliberative. However, the Department still refuses to concede that Congress has an interest in discovering how officials learned that the letter was false *after it was sent*.

Thus, it refused to provide post-Feb. 4th material—even though it is post-decisional and factual in nature. The Department categorically withheld *all* records from after the Feb. 4th letter until Election Day 2014. Only then, after a court order, did it finally produce to the House Committee post-Feb. 4th documents that contained purely factual, post-decisional material.

- **QUESTION 1(a):** *What is the scope of executive privilege, particularly over agency documents unrelated to the President?*

ANSWER:

Article II of the Constitution provides that “[t]he executive Power shall be vested in a President,”⁴ and that “he shall take Care that the Laws be faithfully executed.”⁵ He is, of course, not required to execute all the laws personally; that would be impossible. Execution of the laws may be delegated. But the duty to “*take Care* that the Laws be faithfully executed”⁶ is the President’s alone. Implicit, then, in his duty to “take Care” is the premise of candid communication between the President and his officers and advisors.

The rationale for executive privilege is, above all, “[t]he President’s need for complete candor and objectivity.”⁷ The Court has emphasized that there is a “public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking.”⁸ The reason is simple. “A President and those who assist him must be

² Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

³ 36 Op. O.L.C. 1, 3 (June 19, 2012).

⁴ U.S. CONST. art. II, § 1.

⁵ *Id.* at § 3.

⁶ *Id.* (emphasis added).

⁷ *United States v. Nixon*, 418 U.S. 683, 706 (1974).

⁸ *Id.* at 708.

free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.”⁹

This rationale perhaps applies to some communications among executive officers other than the President, for example communications among presidential advisors in preparation for giving advice to the President. But, at some point, executive branch communications are too far removed from the President himself for the rationale to apply.

You ask whether executive privilege applies to “agency documents unrelated to the President”; the answer, in theory, is “no.” But, on the other hand, it may be hard to say that any agency document is entirely “unrelated to the President,” because, again, “[i]he executive Power shall be vested in a President”¹⁰—personally, solely—and “he shall take Care that the Laws be faithfully executed.”¹¹

The question, then, is how far from the President does the privilege extend, and that question is still unsettled. Prior presidents have maintained that the privilege extends beyond the President himself to lower executive officials.¹² But it is safe to say that the further removed from the President himself, the more attenuated is the rationale for the privilege.

- **QUESTION 1(b):** *Does the President have an executive privilege to withhold documents subpoenaed by Congress that have nothing to do with advice or communications involving the White House? If so, what is the legal basis for that claim?*

ANSWER:

There is no settled answer to this question. “[T]he Justice Department—under Administrations of both political parties—has concluded repeatedly that the privilege may be invoked to protect Executive Branch deliberations against congressional subpoenas.”¹³ But most such assertions of executive privilege apparently concerned

⁹ *Id.*

¹⁰ U.S. CONST. art. II, §1.

¹¹ *Id.* at § 3.

¹² *See, e.g.*, Assertion of Executive Privilege Over Communications Regarding EPA’s Ozone Air Quality Standards and California’s Greenhouse Gas Waiver Request (“EPA Letter”) (Michael Mukasey to George W. Bush) (June 19, 2008), 2008 WL 5506397 (O.L.C.) at *2 (“The doctrine of executive privilege also encompasses Executive Branch deliberative communications that do not implicate presidential decisionmaking.”); Assertion of Executive Privilege Concerning the Special Counsel’s Interviews of the Vice President and Senior White House Staff (Michael Mukasey to George W. Bush) (July 15, 2008), 2008 WL 5458939 (O.L.C.) at *2 (“Executive privilege also extends to all Executive Branch deliberations, even when the deliberations do not directly implicate presidential decisionmaking.”); Assertion of Executive Privilege with Respect to Clemency Decision (Janet Reno to William Jefferson Clinton) (September 16, 1999), 1999 WL 33490208 at *2 (“It is thus well established that not only does executive privilege apply to confidential communications to the President, but also to ‘communications between high Government officials and those who advise and assist them in the performance of their manifold duties.’”) (quoting *Nixon*, 418 U.S. at 705).

¹³ EPA Letter at *2.

communications to or from the White House, at least indirectly. It is safe to say that communications within an executive agency that have nothing whatsoever to do with advice or communications to the White House would be quite far removed from the core rationale for the privilege. Assertion of executive privilege in such circumstances may well be overbroad.

- **QUESTION 1(c):** *Congress created a statutory deliberative process exception for documents subject to Freedom of Information Act requests. Do you think a similar exception applies to congressional subpoenas, or are requests from Congress entitled to more weight?*

ANSWER:

The U.S. Court of Appeals for the D.C. Circuit has recognized the existence of a deliberative process component to the executive privilege,¹⁴ and it was probably right to do so. But the privilege is not absolute, and the legitimate interest of Congress in access to necessary information is entitled to substantial weight. The Freedom of Information Act exception may be instructive, but the scope of the privilege against a congressional subpoena is not necessarily the same as the scope of the FOIA exception.

- **QUESTION 1(d):** *Are deliberative documents just as immune from Congressional scrutiny as they are from FOIA requestors?*

ANSWER:

Again, the FOIA regime may be instructive, but it does not necessarily reflect the proper balance vis-à-vis a congressional subpoena.

- **QUESTION 1(e):** *Can the President assert executive privilege over deliberative material, as the Office of Legal Counsel opinion suggested, “regardless of whether a given document contains deliberative content,” and even where the material is post-decisional?*

ANSWER:

According to the U.S. Court of Appeals for the D.C. Circuit, “[t]he deliberative process privilege does not shield documents that simply state or explain a decision the government has already made or protect material that is purely factual, unless the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government’s deliberations.”¹⁵ It is hard to see how a document that contains no deliberative content whatsoever could be covered by the deliberative-process component of executive privilege. To the extent that the Office of

¹⁴ See *In re Sealed Case*, 121 F.3d at 737.

¹⁵ *Id.* at 737.

Legal Counsel advises the President to assert executive privilege “regardless of whether a given document contains deliberative content,”¹⁶ its claim is probably overbroad.

- **QUESTION 1(f):** *The OLC opinion also claims that providing Congress with non-deliberative or purely factual agency documents would raise “significant separation of powers concerns.” Do you agree, and if so, why?*

ANSWER:

The Office of Legal Counsel seems to suggest that “significant separation of powers concerns” require a distinct executive privilege for documents generated in the course of responding to a congressional inquiry, “regardless of whether a given document contains deliberative content.”¹⁷ This appears to be a novel claim. The sources cited by OLC do not appear to support it, and it would seem to go well beyond the traditional rationale of executive privilege.

- **QUESTION 1(g):** *Given that non-deliberative, purely factual agency documents are clearly not considered part of any protected “deliberative process” under common law or statute, what is the legal justification for withholding such documents under Congressional subpoena?*

ANSWER:

Again, to the extent that the Office of Legal Counsel requests an assertion of executive privilege “regardless of whether a given document contains deliberative content,”¹⁸ its claim appears to be distinctly overbroad.

SENATOR GRASSLEY: In the Fast and Furious litigation, the Department has relied on an extremely broad notion of executive privilege in its refusal to produce non-deliberative, post-decisional documents that would help Congress understand when and how the Department came to know that its Feb. 4, 2011 letter to me denying gunwalking was false. Specifically, the Department categorically refused, until Election Day last year, to produce *64,000 documents*—even though the Attorney General recognized that at least some of those documents “[did] not . . . contain material that would be considered deliberative under common law or statutory standards.”¹⁹ The OLC opinion on the matter

¹⁶ Assertion of Executive Privilege Over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious (“Fast and Furious Letter”) (Eric Holder to Barack Obama) (June 19, 2012), 2012 WL 2869615 (O.L.C.) at *3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12-cv-1332 (D.D.C. Nov. 15, 2013).

suggests that assertion of privilege is proper “regardless of whether a given document contains deliberative material.”²⁰

The Department relied on this overbroad view of executive privilege when it declined to bring the congressional contempt citation of Attorney General Holder before a grand jury.²¹ The Department sent this denial letter to the Speaker of the House before the contempt citation even reached the U.S. Attorney.²² The U.S. Attorney failed to answer my questions seeking an explanation of the facts and circumstances sufficient for Congress to determine whether he made an independent judgment regarding the refusal to present the citation.²³

The law states that it is the “*duty*” of the U.S. Attorney “to bring the matter before the grand jury for its action.”²⁴

- **QUESTION 2(a):** *What does it mean for the U.S. Attorney to have a “duty” to present a congressional contempt citation to a grand jury?*

ANSWER:

In 1984, the Department of Justice considered this question and reached the following conclusion:

First, as a matter of statutory interpretation reinforced by compelling separation of powers considerations, we believe that Congress may not direct the Executive to prosecute a particular individual without leaving any discretion to the Executive to determine whether a violation of the law has occurred. Second, as a matter of statutory interpretation and the constitutional separation of powers, we believe that the contempt of Congress statute was not intended to apply and could not constitutionally be applied to an Executive Branch official who asserts the President’s claim of executive privilege in this context.²⁵

This analysis seems dubious as a matter of statutory interpretation; after all, the word “duty” is quite clear. But it does seem sound as a matter of separation of powers. It is doubtful that Congress can compel a grand jury referral under such circumstances. And,

²⁰ 36 Op. O.L.C. 1, 3 (Jun 19, 2012).

²¹ Letter from Senator Charles E. Grassley to U.S. Attorney Ronald Machen (June 29, 2012), at 2.

²² *Id.* at 1.

²³ *Id.* at 1-2.

²⁴ 2 U.S.C. § 194 (emphasis added).

²⁵ Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege (“Prosecution for Contempt of Congress”) (Theodore Olson to Ronald Reagan), 8 Op. O.L.C. 101, 102 (1984).

of course, even if Congress could compel a prosecution in such circumstances, the President could always pardon the accused.²⁶

- **QUESTION 2(b):** *If the U.S. Attorney has any discretion in cases where there is a claim of Executive Privilege, does he also have an obligation to make an independent evaluation of such a claim? If not, please explain why not.*

ANSWER:

No. Federal prosecutorial discretion ultimately lies with the President. The Constitution provides that “[t]he executive Power shall be vested in a President of the United States,”²⁷ and “if any power whatsoever is in its nature executive, it is the power of appointing, overseeing, and controlling those who execute the laws.”²⁸ It is the President’s personal duty to “take Care that the Laws be faithfully executed,”²⁹ and he does so by giving instructions to those who actually execute the laws. It follows that the U.S. Attorney may rely on the President’s determination—and, indeed, must yield to the President’s control—in assessing the validity of a claim of privilege.

- **QUESTION 2(c):** *Under the Department’s interpretation of the statute, what is left of the Congressional contempt power against any agency able to convince the President to assert executive privilege?*

ANSWER:

Under the Department of Justice’s interpretation of the statute, the “duty” of the U.S. Attorney is discretionary, and so it is very unlikely that a U.S. Attorney will ever prosecute a case for contempt of Congress where the “contempt” derives from a presidential assertion of executive privilege. However, this interpretation does not quite render the contempt power a dead letter. First, a subsequent President might conceivably order a prosecution, even where a prior President has asserted executive privilege. Second, in an extreme case, Congress may conclude that contempt of Congress is a high crime or misdemeanor sufficient to impeach.

- **QUESTION 2(d):** *Under the Department’s interpretation of the statute, what safeguards against a President’s improper claims of executive privilege if not the independent legal judgment of the U.S. Attorney charged by statute with presenting the contempt citation to a grand jury?*

²⁶ See U.S. CONST. art. II, §2.

²⁷ U.S. CONST. art II, §1.

²⁸ James Madison, 1 *Annals of Congress* 481 (1789).

²⁹ U.S. CONST. art. II, §3.

ANSWER:

One safeguard may be judicial review. “Congress could obtain a judicial resolution of the underlying privilege claim and vindicate its asserted right to obtain any documents by a civil action for enforcement of a congressional subpoena.”³⁰

- **QUESTION 2(e):** *The Department relies on its own OLC opinions, which claim, among other things, that the Department should not prosecute officials for contempt at least in part because Congress can resort to civil litigation to enforce its subpoenas. However, it is clear from the delays in the Fast and Furious litigation that this enforcement tool is insufficient to ensure that Congress has adequate access to information to carry out its oversight responsibilities. The House Committee has had to re-issue the subpoena twice to avoid the case being mooted at the beginning of each new Congress. This gives the impression that the Department is delaying the process in hopes that political events may allow it to avoid a judicial resolution. What actions would you advise Congress to take in order resolve the dispute or vindicate its interests in obtaining the documents in a more timely way in a civil suit filed after a contempt citation?*

ANSWER:

Congress might consider changing the rules governing any such civil litigation. It is almost certainly within Congress’s power to require expedited procedures and timely rulings in such cases.

- **QUESTION 2(f):** *Do you believe that, if confirmed, the nominee should re-evaluate the Department’s litigation strategy, the merits of its positions, and refusal to settle the case up to this point?*

ANSWER:

Yes. As discussed above, the assertion of executive privilege “regardless of whether a given document contains deliberative content”³¹ seems to be novel and overbroad. The new Attorney General should reconsider this position.

I hope that you find these answers responsive and useful. Please let me know if the Committee has any additional questions.

Sincerely,

Nicholas Quinn Rosenkranz

³⁰ Prosecution for Contempt of Congress, 8 Op. O.L.C. at 137.

³¹ Fast and Furious Letter at *3.

**Responses From Professor Jonathan Turley
Questions for the Record
From Senator Grassley, Chairman**

1. EXECUTIVE PRIVILEGE QUESTIONS

General remarks: As I testified at the hearing, the Administration has radically overstated executive privilege to a point that threatens core constitutional functions and principles. Because the term does not appear in the Constitution, “executive privilege” is entirely defined by court decisions. There remain good-faith disagreements over the scope of this privilege. Of course, most agree that some privilege is inherent to the functioning of Article II. The Administration, however, has taken this once narrow privilege and expanded it to the point that it has effectively displaced critical legislative powers to investigate actions of the Executive Branch. The use of the deliberative process privilege to obstruct investigations by Congress has magnified these concerns. The Administration has advanced claims that are unprecedented in their scope and deeply troubling in their implications for our system. Indeed, many of these claims appear litigation-driven, opportunistic, and shortsighted. The advancement of clearly unfounded claims by this Administration has undermined the integrity of the Department and has magnified an already serious crisis over the separation of powers.

a. What is the scope of executive privilege, particularly over agency documents unrelated to the President?

The scope of executive privilege has been unmoored from its original position within Article II. In *United States v. Nixon*, 418 U.S. 683 (1974), the Court defined inherent executive privilege in terms of communications with presidents, and protecting advice from close presidential advisers. The extension of this privilege to agency documents is a corruption of the original purpose of executive privilege, and turns a narrowly defined privilege into an all-encompassing exemption from legislative oversight. The Supreme Court, referring to communications of *or* with a president, stated: “The expectation of a President to the confidentiality of his conversations and correspondence, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision making.” *Nixon*, 418 U.S. at 708. As soon as this decision was released, the Justice Department began an unrelenting campaign to expand the privilege to afford administrations a constructive immunity to disclosures demanded from Congress or the courts. What is remarkable is not that the Executive Branch has advanced this extreme interpretation, but that the Legislative and Judicial Branches have largely acquiesced in the face of such arguments.

b. Does the President have an executive privilege to withhold documents subpoenaed by Congress that have nothing to do with advice or communications involving the White House? If so, what is the legal basis for that claim?

In my view, the Administration does not have a basis to withhold documents under executive privilege that are not part of the advice and communications with the White House. While lower courts have extended the privilege to communications of advisers (and not directly

with a president) in cases like *In re Sealed Case* and *Cheney v. U.S. District Court for the District of Columbia*, the functional element of the privilege remains the protection of communications tied to White House deliberations and communications. While some academics favor a broader interpretation of the scope of the privilege, I hold to the original basis laid out by the Supreme Court as the most consistent with the countervailing powers underlying the vesting clauses. Obviously, federal courts can expand on the scope of legitimate assertions, but I believe that the assertions made by the Obama Administration lack any meaningful limiting principles, or a firm foundation in existing precedent.

c. Congress created a statutory deliberative process exception for documents subject to Freedom of Information Act requests. Do you think a similar exception applies to congressional subpoenas, or are requests from Congress entitled to more weight?

No. There has been a concerted effort by the Justice Department and other agencies to effectively conflate the deliberative process exception under the Freedom of Information Act ("FOIA") with executive privilege, in order to create an over-arching exemption from disclosures. Exemption 5 under 5 U.S.C. §552(b)(5) was designed to exclude some "inter-agency or intra-agency memorandums or letters" that would not be discoverable in litigation, including attorney work-product and "deliberative process" privilege. *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1 (2001). The statutory exception serves a different purpose and is based on a different rationale from the executive privilege originally fashioned by the Supreme Court. Clearly, when Congress seeks documents as part of its Article I powers, those demands are given more weight than a FOIA request. Congressional investigations are a critical part of the separation of powers and the balance of the branches in the tripartite system. Such disclosures concern more than advancing the interests of transparency in our government. Disclosure (and exemption) of information to citizens required a statute defining the scope and process for disclosure because it is not mandated under the Constitution. No such statutory authority, however, is needed for Congress to demand information from the Executive Branch. When the Executive Branch defies valid congressional subpoenas, it is challenging the ability of Congress to exercise its constitutionally mandated role of investigation and oversight.

d. Are deliberative documents just as immune from Congressional scrutiny as they are from FOIA requestors?

No. The legal basis for withholding documents under the deliberative process exemption is materially different from claims of executive privilege. To conflate the two areas would effectively negate much of the ability of congressional committees to exercise meaningful oversight over federal agencies. In my view, Congress is not barred from demanding documents labeled as privileged under FOIA's deliberative process privilege.

e. Can the President assert executive privilege over deliberative material, as the Office of Legal Counsel opinion suggested, "regardless of whether a given document contains deliberative content," and even where the material is post-decisional?

As I stated in my testimony, I consider the position of the Obama Administration in the Fast and Furious investigation to lack a good-faith basis for withholding documents. Indeed, the

position of the Office of Legal Counsel (“OLC”) in the case fuels growing concerns over the decline in both the independence and quality of legal analysis at the OLC. Not only has the Administration sought to conflate the deliberative process exemption with executive privilege claims, but has also sought to erase even the lower requirements of the deliberative process claims in withholding documents from Congress. The Justice Department would staunchly oppose such expansive interpretations from another branch. For example, Congress can reasonably claim that the Speech and Debate Clause affords absolute immunity not only to members engaged in legislative business but also to staffers working as part of that legislative process. This application of immunity is supported by cases like *Doe v. McMillan*, 412 U.S. 306 (1973). However, Congress would not be able then to claim that absolute immunity protects employees or members who are not engaged in the legislative process. Here, the Administration is claiming the deliberative process privilege for documents that do not contain deliberative elements. Disconnected from the underlying rationale, the privilege would effectively become absolute immunity if the Administration were able to fashion a non-deliberative deliberative process claim.

- f. **The OLC opinion also claims that providing Congress with non-deliberative or purely factual agency document would raise “significant separation of powers concerns.” Do you agree, and if so, why?**

No. While I would not rule out such concerns being raised in some abusive, undefined demand from Congress, this is not such an extreme case. As I stated in my testimony, the Fast and Furious operation was a classic matter for congressional scrutiny. The demand for non-deliberative, or purely factual agency documents, is far afield from the core challenges to the separation of powers. Indeed, such demands reinforce such separation and balance in the system. They do not significantly intrude upon executive branch powers. It is only when you adopt an expansive view of executive power (and an equally minimalist view of legislative power) that you can seriously entertain this type of argument. The OLC has repeatedly undermined its analysis by adopting such outcome determinative threshold assumptions about executive power. This is one such example.

- g. **Given that non-deliberative, purely factual agency documents are clearly not considered part of any protected “deliberative process” under common law or statute, what is the legal justification for withholding such documents under Congressional subpoena?**

I know of no cognizable legal justification for withholding such documents for non-deliberative or purely factual agency documents in the case of a valid congressional subpoena. If the Administration is allowed to exercise such discretion in what non-deliberative or factual material will be released to Congress, the oversight authority of Article I becomes purely discretionary for a president to allow or deny at his whim. A president is not allowed to dictate the facts that will be considered in a congressional investigation of his actions, or those of his subordinates.

2. FAST AND FURIOUS QUESTIONS

General remarks: As discussed in my testimony, I consider the refusal to submit contempt charges to the Grand Jury in recent cases to be a fundamental breach of the understanding reached between the branches on the use of statutory contempt rather than “inherent contempt” authority. Congress has the inherent right to find officials in “inherent contempt.” Indeed, an inherent contempt proceeding was held as recently as 1934. The Justice Department long bristled at the notion of contempt proceedings handled by the legislative branch and supported the use of the criminal contempt process created in 1857 under 2 U.S.C. § 194 (2000). The actions taken by the Administration with regard to Attorney General Holder not only violated the foundational understanding of the branches, but magnified the conflicts of interest that are evident in the handling of the controversy by the Justice Department. As the Supreme Court has stressed, “[t]he power of the Congress to conduct investigations is inherent in the legislative process.” *Watkins v. United States*, 354 U.S. 178, 187 (1957). The obstruction of efforts to punish contemptuous witnesses or parties is tantamount to the denial of the inherent ability of the Congress to carry out this core function. Otherwise, as the Court noted in *Anderson v. Dunn*, 19 U.S. 204, 228 (1821), Congress would be “exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may mediate against it.” One can certainly argue that the Court’s warning proved prophetic given what occurred in the controversy over the Fast and Furious operation.

a. What does it mean for the U.S. Attorney to have a “duty” to present a congressional contempt citation to a Grand Jury?

The statute uses mandatory language stating that it is the U.S. Attorney’s “duty . . . to bring the matter before the Grand Jury for its action.” 2 U.S.C. § 194. This language reflects the understanding of Congress that the U.S. Attorney would be a faithful agent of the congressional contempt process in lieu of Congress acting unilaterally to prosecute such individuals under its inherent authority. When such a referral is made, an investigatory process has already occurred in the legislative branch, resulting in a vote taken by the legislative body. In that sense, the referrals come to the U.S. Attorney after a special legitimating process and not simply a bare allegation. That formal process of referral is precisely why the statute was written with the presumption of a submittal to a Grand Jury. The statute only requires the submission of the matter and does not control ultimate prosecutorial decisions. Notably, prosecutors have the discretion later to drop criminal charges or secure plea agreements after any indictment. They also have considerable power over Grand Juries. Frankly, it is an easy thing for a prosecutor to effectively “poison the well” of an indictment in presenting it to a grand jury. Those dangers cannot be avoided by this statute and allow prosecutors ample flexibility in presenting, and ultimately, prosecuting a case. The statute only requires the submission of the citation to the grand jury and does not confine the prosecutors further in their decisions regarding the presentation or advancement of the case.

While I believe that these citations should be presented to the Grand Jury as contemplated in the statute, there is a good-faith argument that such language should be read to include some recognition of the inherent discretion exercised by prosecutors in criminal cases. That admittedly interesting debate, however, is less compelling in this situation. First, this is not a conventional criminal case, but rather a formal referral under a statutory provision of a legislative contempt

citation. Even if prosecutorial discretion applies, it should be exercised in a more abridged fashion when the underlying charges are brought by a vote of Congress. Second, absent a baseless or abusive charge, it is hard to see the legitimate basis for prosecutorial discretion in blocking consideration of the allegations by the Grand Jury. The contempt citation against Attorney General Holder was well-based and well-documented. It may not be enough for a Grand Jury, but it was clearly enough to submit to a Grand Jury. As a criminal defense attorney, I have seen far more speculative and illusory claims submitted to federal Grand Juries. Indeed, the Justice Department is often accused of using Grand Juries as “perjury traps” and “fishing expeditions,” as the threshold appears so low as to be indiscernible for submission of allegations to a Grand Jury. Even if the Administration did not consider the submission to be a mandatory duty, it clearly should feel compelled to do so absent a showing of facial invalidity or abuse.

- b. If the U.S. Attorney has any discretion in cases where there is a claim of Executive Privilege, does he also have an obligation to make an independent evaluation of such a claim? If not, please explain why not.**

I believe that he does. Indeed, one of my greatest concerns is the appearance of a conflict of interest in a direct subordinate of the Attorney General barring the consideration of charges *against* the Attorney General. At a minimum, even if the U.S. Attorney was going to make such a decision against the head of his own agency, he should have made this decision independently after a full consideration of the underlying allegation. This includes creating a formal separation from Main Justice in dealing with the referral.

- c. Under the Department’s interpretation of the statute, what is left of the Congressional contempt power against any agency able to convince the President to assert executive privilege?**

As discussed in my testimony, I believe that the Justice Department has effectively gutted the power of Congress to hold Administration officials in contempt and, by extension, has denied a fundamental element of legislative power. Congress retains its inherent contempt authority, albeit unused for 80 years. There were good reasons, however, to continue to use the statutory contempt process with the understanding that these citations would be given to the grand jury. Yet, absent the commitment of the Justice Department to fulfill its obligation to submit these matters to the Grand Jury, the contempt power remains under the ultimate control of the Executive Branch. While prosecutors can ultimately plead out, or even drop charges, the submission to the Grand Jury is an important element in maintaining the deterrent force of congressional action. An indictment carries the judgment of a group of independent citizens and makes it more difficult for an administration to scuttle a case, particularly against one of its top officials in the Executive Branch. After the actions of the Justice Department, the contempt power remains little more than paper tiger that will hardly concentrate the mind of a contemptuous official. Attorney General Holder’s case reinforces the view that the Justice Department protects its own by obstructing proceedings in both the Legislative and Judicial Branches. Congress must either revive its inherent contempt authority or explore new legislation to force the Justice Department to handle these referrals in an independent and consistent manner.

- d. **Under the Department's interpretation of the statute, what safeguards against a President's improper claims of executive privilege if not the independent legal judgment of the U.S. Attorney charged by statute with presenting the contempt citation to a Grand Jury?**

Clearly, absent independent review, the U.S. Attorney is only replicating the earlier decision of the Administration. The absence of an independent review makes the contempt referral entirely meaningless, since the Justice Department will only enforce its earlier position through a subordinate official. Indeed, if Main Justice dictated the rejection of the referral, the action only deepens the concerns over the contempt and obstruction of Congress in the controversy.

- e. **The Department relies on its own OLC opinions, which claim, among other things, that the Department should not prosecute officials for contempt at least in part because Congress can resort to civil litigation to enforce its subpoenas. However, it is clear from the delays in the Fast and Furious litigation that this enforcement tool is insufficient to ensure that Congress has adequate access to information to carry out its oversight responsibilities. The House Committee has had to re-issue the subpoena twice to avoid the case being mooted at the beginning of each new Congress. This gives the impression that the Department is delaying the process in hopes that political events may allow it to avoid a judicial resolution. What actions would you advise Congress to take in order resolve the dispute or vindicate its interests in obtaining the documents in a more timely way in a civil suit filed after a contempt citation?**

First and foremost, the Justice Department does not get to choose the best course for Congress. To the extent that Congress has both a civil and a criminal option, it alone determines which option should be pursued. Neither the Constitution nor the statute gives the Justice Department the discretion to dictate the best practices for the Legislative Branch. Indeed, the Justice Department itself chooses between civil or criminal options in a variety of areas while jealously protecting its sole authority to make such judgments. Thus, the Justice Department can pursue someone for civil contempt and then bring a criminal contempt charge. The same choices are made in a variety of forfeiture, environmental, and regulatory areas. Second, the Justice Department's obstruction of the civil process provides ample reason why Congress should be leery of pursuing that route. Civil proceedings are notoriously slow and easy to delay. Moreover, they lack the stigma of criminal contempt referrals that indicates the seriousness of these actions for our system.

As to other ways to vindicate the authority of Congress, there are options. First, Congress can consider a revival of inherent contempt powers as previously discussed. No one sees the old congressional prosecutions as ideal, but the Justice Department's obstruction may leave no alternative. There is no indication that the Justice Department is willing to guarantee submission of these referrals. Absent such a guarantee, Congress has to find a way to enforce its contempt

powers if it is going to be able to function fully in its oversight role. Second, the obstruction of both the congressional investigation, and then a Grand Jury investigation, may create, in some cases, a legitimate basis for the impeachment of Administration officials. While impeachment should always be viewed as an extreme and generally disfavored option, some acts of obstruction may raise legitimate grounds for the removal from office. Many people wrongly assume that impeachment is only a device for removing presidents and judges. To the contrary, other officials, including Attorneys General, can be impeached.¹ If an Attorney General has steadfastly and unjustifiably blocked investigations in both the Legislative and Judicial branches, Congress may consider the option of removal from office. Third, Congress can explore additional legislation that requires independent counsel to handle contempt citations against Administration officials, particularly in cases involving Justice Department officials. What is clear is that, regardless of which of these courses Congress may take, it should commit itself to taking action. The current situation is untenable for Congress. The Legislative Branch cannot allow the Justice Department effectively to strip this institution of the ability to hold officials accountable for obstruction and contempt of its investigations. With the expansion of executive power in recent years, this institution can ill-afford the loss of such a basic component of legislative authority. Congress must act if Article I is to be more than a paper tiger in the constitutional balance of powers.

f. Do you believe that, if confirmed, the nominee should re-evaluate the Department's litigation strategy, the merits of its positions, and refusal to settle the case up to this point?

Indeed, I do. In fact, I believe that Senators are within their right to demand answers to these basic questions as a condition for confirmation. Many of these questions are not contextual, but threshold legal judgments. For example, the use of the deliberative process privilege as akin to executive privilege, is a straightforward issue that any nominee should be prepared to answer. As I discussed in my testimony, I have long advocated the use of confirmation hearings to reinforce congressional authority over agencies and check the increasing independence and dominance of the Executive Branch. Confirmation hearings take on added importance during such constitutional crises. Confirmation hearings necessarily raise not just the credentials, but also the policies to be pursued by a nominee. Assuming that Ms. Lynch is confirmed without answering these questions, she should commit herself to a review of these cases and, more importantly, the underlying positions taken by the Justice Department. Attorney General Holder has left the interbranch relations with Congress in tatters. If those relations are to be repaired, the new Attorney General must speak clearly and candidly to Congress. That does not mean that she will agree with Congress, but she should at least afford this body the courtesy of clarity as to the approach of the Department in cases of contempt, privilege assertions, and other core issues.

¹ See generally Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 *Duke L.J.* 1, 44-57 (1999); Jonathan Turley, *The Executive Function Theory, The Hamilton Affair, and Other Constitutional Mythologies*, 77 *N.C. L. Rev.* 1791, 1819-20 (1999).

December 9, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We, the undersigned law enforcement officers and police department, recognize the need for commonsense reforms to remedy deficiencies in our broken immigration system. Although not a permanent fix, the recent executive reforms on immigration will make it easier for law enforcement to carry out our duties – encouraging immigrants to come out of the shadows and supporting community policing efforts. While no substitute for legislative action, the package of executive reforms is an important first step in improving the security of our borders, keeping families together, supporting businesses and workers, and promoting the safety of our communities.

By further prioritizing the removal of dangerous criminals over those with longstanding ties to the community who do not threaten national security or public safety, the executive reforms allow law enforcement to focus on confronting the real threats to our communities, including criminal organizations and gangs. Additionally, in ending the Secure Communities program and replacing it with the Priority Enforcement Program, the executive reforms will improve our relationship with our communities so that we are not being asked to hold people who the Department of Homeland Security does not have probable cause to remove.

The executive reforms also ease the burden on otherwise law-abiding immigrants and mixed families residing in the United States, extending deferred action to qualifying parents of U.S. citizens and legal permanent residents, as well as additional people brought to the U.S. as children. These changes will promote family unity while aiding community policing.

The current immigration system separates families and undermines trust and cooperation between police agencies and immigrant communities that is essential to community-oriented policing. All too often, immigrants resist calling authorities or otherwise cooperating with law enforcement out of fear that their cooperation may lead to being caught and removed from the country. Undocumented immigrants may be afraid to call authorities when criminal activity is happening in their neighborhoods, when they are victims or witnesses of crime, or when someone is sick or injured and needs an ambulance. For law enforcement officers charged with public safety, this situation creates the conditions for criminal enterprises which grow and undermine safe communities. By bringing otherwise law-abiding immigrants out of the shadows and reassuring them that their cooperation with law enforcement will not separate them from their lives and families in the United States, the executive reforms build trust, root out crime, and improve public safety within our communities.

While the executive reforms improve a broken immigration system, they can achieve only a fraction of what can be accomplished by broad congressional action. We continue to recognize that what our broken system truly needs is a permanent legislative solution and urge Congress to enact comprehensive immigration reform legislation.

Sincerely,

Chief Richard Biehl
Dayton Police Department
Dayton, Ohio

Chief Chris Burbank
Salt Lake City Police Department
Salt Lake City, Utah

Sheriff Paul H. Fitzgerald
Story County Sheriff's Office
Nevada, Iowa

Chief J. Thomas Manger
Montgomery County Police Department
Gaithersburg, Maryland

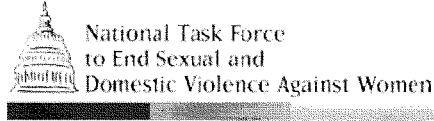
Sheriff William McCarthy
Polk County Sheriff's Office
Polk County, Iowa

Chief Ron Teachman
City of South Bend Police Department
South Bend, Indiana

Chief Michael Tupper
Marshalltown Police Department
Marshalltown, Iowa

City of Madison Police Department
Madison, Wisconsin

*signatories updated 12/10/2014



December 9, 2014

Dear Senator,

The Steering Committee of the National Task Force to End Sexual and Domestic Violence (“NTF”), comprised of national leadership organizations advocating on behalf of sexual and domestic violence victims and women’s rights, writes in support of President Obama’s Executive action to defer the removal of the parents of U.S. Citizen and Legal Permanent Resident children, and to expand the deferred action program for non-citizens who entered the United States as children. These Executive actions offer a needed opportunity to remove obstacles to immigrant survivors’ access to safety and justice, by reducing their vulnerabilities to abuse and exploitation due to fear of deportation.

This fall we are celebrating the twentieth anniversary of the bipartisan Violence Against Women Act (“VAWA”), which has, since it was first enacted, included critical protections for immigrant victims of domestic and sexual violence. Over the last two decades, victims have benefited from executive action deferring removal in cases involving victims protected by VAWA. Executive actions under both Republican and Democratic administrations have enhanced their safety and ability to recover from abuse. These include protections for spouses and children of abusive U.S. Citizens and Permanent Residents, with approved petitions under the Violence Against Women Act, who are awaiting the availability of immigrant visas. In addition, non-citizens eligible for crime-victim visas based on certification from criminal legal system officials have benefited from executive branch deferral from removal, enhancing victims’ ability to participate in holding offenders accountable. For these reasons, we support the authority of the Executive branch to defer the removal of classes of very vulnerable non-citizens.

We strongly urge members to prioritize the needs of immigrant survivors of domestic and sexual violence, stalking, trafficking, and child abuse and support President Obama’s Deferred Action for Parents, and expansion of the Deferred Action for Childhood Arrivals program. If you have any questions or concerns, please contact us for further information through Grace Huang at grace@wscadv.org, or (206) 389-2515 x 209.

Sincerely,

The member organizations of The National
Taskforce to End Sexual and Domestic Violence
www.4vawa.org



RECEIVED FEB 05 2015

January 27, 2015

The Honorable Charles E. Grassley
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick L. Leahy
Ranking Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

Since 1999, Women in Federal Law Enforcement (WIFLE) has worked to promote the recruitment, retention and promotion of women in federal law enforcement occupations as a means to enhance the efficacy of law enforcement operations. Today we write to express our support for the nomination of Loretta E. Lynch to the position of Attorney General of the United States. Ms. Lynch received the 2014 WIFLE Foundation President's Award which is our highest honorary award given by WIFLE to recognize an individual for outstanding achievement in the federal government.

Ms. Lynch is a passionate advocate for law enforcement and is committed to protecting public safety. As you know, she served as a line federal prosecutor in the trenches with local police officers and federal agents, prosecuting white-collar crime, public corruption and civil rights cases. During her time in the private sector, she served as Special Counsel to the Prosecutor of the United Nations International Criminal Tribunal for Rwanda and conducted a special investigation into allegations of witness tampering and false testimony at the Tribunal.

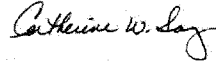
Ms. Lynch's career, in short, has been defined in no small measure by a longstanding, deep commitment to public safety and her colleagues in front-line law enforcement. With this experience, we believe her to be well qualified to serve as the Attorney General and look forward to working with her on a broad range of law enforcement and public safety issues. It is our hope that the Senate will confirm Ms. Lynch promptly to serve as the Attorney General of the United States.

WIFLE FOUNDATION, INC. SUITE 102, PMB-204 2200 WILSON BLVD. ARLINGTON, VA 22201

Phone: (301) 805-2180 | Web: www.WIFLE.org | Email: WIFLE@comcast.net

In addition to Ms. Lynch's many accomplishments, she also serves as a role model to all women in law enforcement. Research shows that role models serve a critical component in the recruitment, retention, and promotion of women in law enforcement.

Sincerely,



Catherine W. Sanz
President
WIFLE Foundation, Inc.



National District Attorneys Association
 99 Canal Center Plaza, Suite 330, Alexandria, Virginia 22314
 703-549-9222 / 703-836-3195 Fax
www.ndaa.org

November 9, 2014

The Honorable Patrick Leahy
 Chairman
 Senate Judiciary Committee
 437 Russell Senate Office Building
 Washington, DC 20510

The Honorable Charles Grassley
 Ranking Member
 Senate Judiciary Committee
 135 Hart Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley,

On behalf of the National District Attorneys Association (NDAA), representing 2500 elected and appointed District Attorneys across the United States as well as 40,000 assistant district attorneys, I write in strong support of Loretta Lynch's nomination to lead the Department of Justice (DOJ) as the next Attorney General of the United States. As prosecutors facing challenges in the field from violent crime, to human trafficking, to gangs and drug traffickers, our membership feels that Ms. Lynch understands the operational nature of these challenges and will be a strong independent voice at the helm of the Department.

After Ms. Lynch joined the US Attorney's Office for the Eastern District of New York in 1990, she quickly rose through the ranks, culminating in her nomination in 1999 to be the US Attorney in that office. Now in her second stint as the US Attorney for the Eastern District of New York, Ms. Lynch has prosecuted cases involving violent crime, terrorism, public corruption, organized crime and drug trafficking, giving her a breadth of experience in some of our nation's most serious crimes. Her experience prosecuting terrorism related cases has earned her office the reputation of being a leading voice on national security issues, a vital component to protecting our nation's citizens and promoting public safety.

In addition to her role as a US Attorney, she currently leads the Attorney General's Advisory Committee, advising the current Attorney General on a wide variety of operational and policy challenges facing practitioners in the field. Our membership, including the District Attorneys in jurisdictions under the US Attorney's Office in the Eastern District, feels very strongly that Ms. Lynch will be a fair, balanced, and independent Attorney General.

Having already been confirmed twice by acclamation, we look forward to a swift and fair consideration of Loretta Lynch's nomination to be the next Attorney General and hope that you will consider NDAA as a resource in support of Ms. Lynch's character, work ethic, and policy expertise. We would also greatly appreciate the opportunity to meet with Ms. Lynch upon confirmation to discuss NDAA's priorities and ways in which our organization can partner with DOJ to advance public safety across the country.

Respectfully,

Michael Moore
 President
 National District Attorneys Association



KATHLEEN M. RICE
DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
NASSAU COUNTY

November 17, 2014

Hon. Harry Reid, Senate Majority Leader
Hon. Mitch McConnell, Senate Majority Leader-Elect
Hon. Patrick J. Leahy, Chair, Senate Judiciary Committee
Hon. Chuck Grassley, Ranking Member, Senate Judiciary Committee

Messrs. Reid, McConnell, Leahy and Grassley:

I am writing to urge the expeditious, bipartisan confirmation of United States Attorney Loretta Lynch as Attorney General, to replace Eric Holder upon his departure from the Justice Department.

As a District Attorney who has worked with Ms. Lynch on numerous cases of violent and white-collar crimes, and as a former Assistant U.S. Attorney myself, I know that Ms. Lynch has everything that our communities and our nation need in the country's top law enforcement official. I know that she has the toughness, the fairness and the dedication to upholding our laws that we need in an Attorney General to protect America from threats and injustice both domestic and international.

In fighting terrorism, financial crimes, public corruption, gang crimes and civil rights violations, Ms. Lynch's list of accomplishments is long and well-known. She's widely admired for her quiet approach to doing justice – vigorously and without focusing on personal credit or political gain.

Like all good prosecutors, Ms. Lynch is not a partisan figure, and allows the law – not politics – to guide her as she serves as an advocate for Americans. In today's too-partisan environment in Washington, Ms. Lynch is a refreshingly non-partisan professional that the Senate – and the nation – should support.

There's no doubt that Ms. Lynch's confirmation would be historic cause for celebration in that she would be the first woman of color to be United States Attorney General. I'd submit that the prospect of a bipartisan, unanimous vote in Ms. Lynch's favor would be just as historic. Both would give our nation much to be proud of at a time when the dignity of our democratic process is too often hijacked by political rancor and partisan gamesmanship.

As leaders of the U.S. Senate, you have the power to set the serious, bipartisan tone our nation needs at this moment. I urge you to exercise that power and encourage the swift bipartisan confirmation of Ms. Lynch, which I wholeheartedly support.

Sincerely,

KATHLEEN M. RICE
District Attorney

December 3, 2014

BY FEDERAL EXPRESS

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
437 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of Loretta E. Lynch

Dear Senator Leahy and Senator Grassley:

We are former United States Attorneys for the Eastern District of New York¹. We write to express our strong support of the nomination of the current U.S. Attorney for the Eastern District of New York, Loretta E. Lynch, to serve as the Attorney General of the United States.

All of us know Loretta well and have interacted with her over the many years of her exceptionally distinguished career. We also know of her reputation within the New York legal and law enforcement communities. Based on that knowledge, we are highly confident that Loretta possesses the intelligence, judgment, integrity and commitment that is necessary for this important position and that will make her an outstanding Attorney General.

A graduate of Harvard College and Harvard Law School, Loretta has dedicated over 15 years of her career to serving the U.S. Department of Justice. During her first tenure in the U.S. Attorney's Office (1990-2001), she personally prosecuted some of the Office's most sensitive and significant matters, including the prosecution of over a dozen members of the Green Dragons, an extremely violent gang, and the civil rights prosecution of the New York City police officers responsible for the brutal custodial assault of Abner Louima. Loretta also served in a number of important supervisory capacities, including Chief of the Office's Long Island Division, Chief Assistant United States Attorney and, from 1999 to 2001, the United States

¹ All of the other living former U.S. Attorneys for the Eastern District of New York are currently members of the federal judiciary or, in one instance, the Chair of a federal agency.

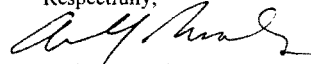
Attorney. Through her work, we came to know Loretta as a smart, hard-working, eloquent and dedicated prosecutor who, through a low-key and even-tempered approach, developed a strong record of success and garnered great respect within the law enforcement and legal communities.

The Department of Justice was very fortunate to have Loretta return in 2010 for a second tenure as the United States Attorney. During that time, Loretta has solidified her role as an integral leader in the Justice Department, not just in New York but nationwide. For several years, she has served on the Attorney General's Advisory Committee – most recently as its Chair –and, in that capacity, been instrumental in shaping Department-wide policies and priorities. In the Eastern District of New York, Loretta has overseen numerous significant prosecutions in the areas of terrorism, cybercrime, financial crime, public corruption and health care fraud, among others, and has made the Eastern District one of the leading U.S. Attorney's offices in the country in each of these areas.

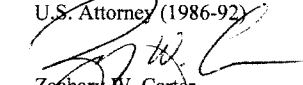
In short, we know from our personal experience that there is no question that Loretta is exceptionally qualified to serve as our country's justice leader. But her commitment to justice transcends those qualifications. She is deeply committed to making our communities safer and our justice system effective, efficient and, above all, fair. She speaks with intelligence and passion about the pursuit of justice on behalf of the people of this country. The United States will benefit greatly from her continued commitment to that cause.

We therefore endorse, with pride and enthusiasm and without reservation, the nomination of Loretta Lynch to serve as the Attorney General of the United States.

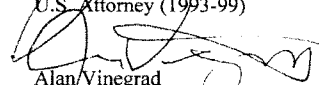
Respectfully,



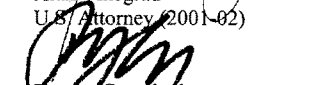
Andrew J. Maloney
U.S. Attorney (1986-92)



Zachary W. Carter
U.S. Attorney (1993-99)



Alan Vinegrad
U.S. Attorney (2001-02)



Benfor Campbell
U.S. Attorney (2007-10)

December 9, 2014

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of Loretta E. Lynch

Dear Senators Leahy and Grassley and Members of the Judiciary Committee:

We are former Assistant U.S. Attorneys in the Office of the U.S. Attorney for the Eastern District of New York ("EDNY") and were division heads, chiefs, and deputy chiefs during our respective tenures there. We write in strong support of the nomination of Loretta E. Lynch to be the next Attorney General of the United States.

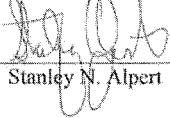
Most of us have had the honor of working with Loretta in the EDNY, some of us as her colleagues and some of us as her staff, during her two tenures in our former office. Many of us have known her for decades, since the beginning of her federal government career in 1990. From our first-hand experience working as federal prosecutors within the Department of Justice, we fully appreciate the vital role that the Attorney General plays in shaping federal prosecutorial policies and priorities in a wide range of critical issues facing our country, including the investigation and prosecution of terrorism, white collar crime, the fight against cybercrime, civil rights, the protection of our children from online predators, and the development of close working relationships with law enforcement agencies around the world. In each of these areas, and many more too numerous to name, Loretta has excelled in every way. We are confident that, as Attorney General, she will lead the Department of Justice in the same successful way. Loretta herself prosecuted many cases of critical importance during her tenure as a line assistant, and, once she assumed leadership of the office, encouraged her assistants to do the same. In recent years, Loretta has overseen cases involving alleged political corruption, terrorism, institutional money laundering by a foreign-based bank, and the Foreign Corrupt Practices Act. In each case she acted with only the fairness of the judicial system and the protection of the integrity of the rule of law as her goals.

In our collective opinion, Loretta Lynch will prove to be an outstanding leader of the Department of Justice. During her tenure in the EDNY, and between her two appointments as U.S. Attorney while a partner at Hogan & Hartson, we have come to appreciate the skilled negotiator, trial lawyer, and consummate professional that Loretta is. Her judgment is impeccable, her concern

about the critical issues that face our nation is genuine, and her commitment to the ideals that form the core of the Department of Justice is unwavering. Given Loretta's wealth of criminal and civil litigation experience, her impressive legal credentials, and her impeccable reputation for integrity and honesty, we have no doubt that she will serve not only the Department of Justice, but also the nation, with honor, bravery, and the utmost commitment to the fair administration of justice. We are incredibly proud to have served with Loretta in the EDNY. We can assure you that the men and women of the entire Department of Justice will feel the same way.

In sum, we are certain that Loretta has the wisdom and demonstrated judgment that should be expected of someone who has been chosen to lead the Department of Justice. She will be an outstanding Attorney General, and we support her nomination without reservation.

Very truly yours,



Stanley N. Alpert

Katya Jestin

Jodi L. Avergun

Gregory J. O'Connell

Robert L. Begleiter

Patricia A. Pileggi

Jason Brown

David A. Pitofsky

Eric O. Corngold

Lauren J. Resnick

Matthew E. Fishbein

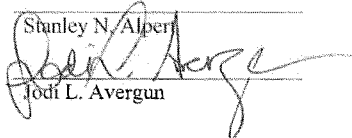
George A. Stamboulidis

J. Christopher Jensen

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Jason Brown

David A. Pitofsky

Eric O. Corngold

Lauren J. Resnick

Matthew E. Fishbein

George A. Stamboulidis

J. Christopher Jensen

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Very truly yours,

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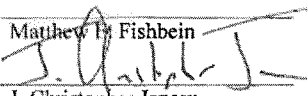
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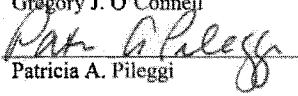
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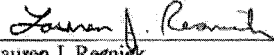
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Eric O. Corngold



Lauren J. Reznick

Matthew E. Fishbein



George A. Stamboulidis

J. Christopher Jensen

Michael D. Page
Chairman
 702 Basil Drive
 Durham, NC 27713
 Email: mdelanopage@aol.com

Brenda A. Howerton
Vice-Chairman
 3325 Tarleton West
 Durham, NC 27713
 Email: brendahowerton10@yahoo.com



**COUNTY OF DURHAM
 BOARD OF COMMISSIONERS**

Fred Foster, Jr.
 5718 Whippoorwill Street
 Durham, NC 27704
 Email: ffosterjr@dcconc.gov

Wendy S. Jacobs
 4308 Rivermont Road
 Durham, NC 27712
 Email: wjacobs@dcconc.gov

Ellen W. Reckhow
 11 Pine Top Place
 Durham, NC 27705
 Email: ereckhow@gmail.com

December 15, 2014

The Honorable Charles Grassley
 Chairman, Committee on the Judiciary
 United State Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

Re: Nomination of Loretta Lynch as United States Attorney General

Dear Chairman Grassley:

On behalf of the Durham Board of County Commissioners of Durham, North Carolina, I am writing to express my enthusiastic support of President Barack Obama's nomination of the Honorable Loretta Elizabeth Lynch to United States Attorney General. Our community is elated about the nomination of Loretta, a former resident of Durham.

If appointed, Loretta would be the first African-American woman to hold the office created to guide the world's central agency for enforcement of federal laws. She has a blazing trail of history-making in her legal career that includes positions held since completing the prestigious Harvard Law School in 1984. Knowing her strong foundation and capabilities, it would give great joy to the people of Durham to witness her swearing into America's highest legal post. Her aptitude and attitude are fit for the position of U.S. Attorney.

I am honored to let you know that the education she received in Durham Public Schools also helped to prepare Loretta for her exemplary post-secondary education and litigious positions in state and federal government. Loretta was a well-rounded student that learned about the power of education beyond the classroom. Her first impressions regarding the necessity of justice in our world came while observing her father, Rev. Dr. Lorenzo Lynch, in his years as a noble civil rights leader and pastor of the historic White Rock Baptist Church here in Durham.

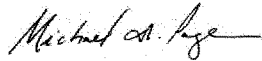
According to Loretta's father, when Loretta graduated Durham High School in 1977, she was to be the class valedictorian. However, she was made to share the honor with a white student with a lower grade point average. I am certain in that moment, her understanding of equality became clearly defined and quite possibly it ignited an unstoppable passion for what is fair and just. The Durham High School graduate who was to be top of her graduating class, but had to share the stage, may be our country's next attorney general!

Her legal record is laudable and fit for the position of U.S. Attorney. Loretta's thirst for knowledge, countless accomplishments and commitment to justice have led to her being referred to as "a strong, independent prosecutor," by the Office of the White House. We urge you and the members of the United States Senate to recognize her undeniable attributes by confirming her as the 83rd Attorney General of the United States of America.

Loretta is distinguished and a consummate professional. She is heroic and a trailblazer firmly supported by the Durham community. As we anticipate her appointment and leadership in our nation's capitol, we are proud to say she "will always be a Durhamite!"

I look forward to and pray for a favorable outcome for our beloved Loretta. I believe she is well-qualified for this position and urge her swift confirmation.

Sincerely,



Michael D. Page, Chairman
Durham Board of County Commissioners

Michael D. Page
Chairman
 702 Basil Drive
 Durham, NC 27713
 Email: mdelanopage@aol.com

Brenda A. Howerton
Vice-Chairman
 3325 Tarleton West
 Durham, NC 27713
 Email: brendahowerton10@yahoo.com



**COUNTY OF DURHAM
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December 15, 2014

The Honorable Patrick J. Leahy
 Ranking Member, Committee on the Judiciary
 United States Senate
 437 Russell Senate Building
 Washington, D.C. 20510

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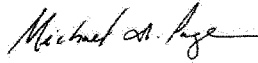
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Sincerely,



Michael D. Page, Chairman
Durham Board of County Commissioners

RECEIVED JAN 09 2015



**NATIONAL ORGANIZATION OF
BLACK LAW ENFORCEMENT EXECUTIVES**

HUBERT T. BELL, JR. OFFICE COMPLEX
4609 PINECREST OFFICE PARK DR. • SUITE F
ALEXANDRIA, VA 22312-1442
(703) 658-1529 • FAX: (703) 658-9479
Website: <http://www.noble-national.org>

December 27, 2014

The Honorable Senator Patrick J. Leahy, Chairman
433 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Senator Charles E. Grassley, Ranking Member
711 Hart Senate Office Building
Washington, DC 20510-3802

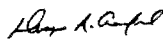
Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the National Organization of Black Law Enforcement Executives (NOBLE), our Executive Board, local chapters, and members, we write to express our formal support for the nomination of Loretta E. Lynch to the position of United States Attorney General. Ms. Lynch has the qualifications, skills, and temperament to be an outstanding Attorney General. Additionally, Ms. Lynch has a breadth and depth of experience in public service, management, and leadership that make her an exceptional candidate for this post.

We applaud President Barack Obama's selection of Ms. Lynch for this position and urge you to support this nomination.

Should you have any questions, please have a member of your staff contact Dwayne Crawford, at (404) 849-8966, drcrawford@noblenatl.org.

Sincerely,


Dwayne A. Crawford
Executive Director
NOBLE

Cedric L. Alexander
Dr. Cedric L. Alexander
National President
NOBLE



MAJOR CITIES CHIEFS ASSOCIATION

- Albuquerque
- Arlington
- Aurora
- Austin
- Baltimore
- Baltimore Co.
- Birmingham
- Boston
- Buffalo
- Calgary, Canada
- Charleston-Necklenburg
- Chicago
- Cincinnati
- Cleveland
- Columbus
- Dallas
- Denver
- Detroit
- Edmonton, Canada
- El Paso
- Fairfax County
- Fort Worth
- Fresno
- Honolulu
- Houston
- Indianapolis
- Jacksonville
- Kansas City
- Las Vegas Metro
- London, England
- Long Beach
- Los Angeles
- Los Angeles Co.
- Louisville
- Manchester, England
- Memphis
- Mesa
- Miami
- Miami-Dade
- Milwaukee
- Minneapolis
- Montgomery Co.
- Montreal, Canada
- Nashville
- Nassau Co.
- New Orleans
- New York City
- Newark
- Oakland
- Oklahoma City
- Omaha
- Ottawa, Canada
- Peel Region, Canada
- Philadelphia
- Phoenix
- Pittsburgh
- Portland
- Prince George's Co.
- Quebec City, Canada
- Raleigh
- Sacramento
- Salt Lake City
- San Antonio
- San Diego
- San Francisco
- San Jose
- Seattle
- St. Louis
- Suffolk Co.
- Tampa
- Toronto, Canada
- Tucson
- Tulsa
- Vancouver, Canada
- Virginia Beach
- Washington
- Winnipeg, Canada

January 8, 2015

The Hon. Chuck Grassley
135 Hart SOB
Washington, D.C. 20510

The Hon. Patrick Leahy
437 Russell SOB
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of The Major Chiefs Association, representing the 67 largest local law enforcement agencies in the Nation, I am writing to support a swift confirmation for Loretta Lynch to be the next Attorney General of the United States.

Loretta Lynch has a long and distinguished record of service to the Nation and the Department of Justice. She has twice served as the U.S. Attorney for the Eastern District of New York, which requires Senate confirmation. As the head of this important office, Ms. Lynch has overseen many important criminal prosecutions for terrorism, organized crime, corruption, drug and gang-related cases. It is clear that her familiarity with the Department, managing a fast-paced and high profile office as well as her integrity and private sector legal experiences make her a qualified candidate.

We appreciate your strong leadership on this matter and look forward to seeing Loretta Lynch confirmed through the Committee's process so she may begin to serve the American people in this important role as quickly as possible.

Sincerely,

Tom Manger
Chief of Police
Montgomery County Police Department, Maryland
President
Major Cities Chiefs Association



Alcoa

950 Park Avenue
New York, NY 10022-4808 USA
Tel: 1 212 836 2731
austrey.strauss@alcoa.com

Audrey Strauss
EVP, Chief Legal Officer &
Corporate Secretary

January 13, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United State Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

I am Executive Vice President and Chief Legal Officer of Alcoa Inc. I write in support of the nomination of Loretta Lynch for Attorney General of the United States. I have known Loretta for over twenty years as a professional colleague at the bar. She has also twice served as the U.S. Attorney of the District in which I reside, so I have observed her work in public service as a member of the bar and as interested citizen.

Loretta is a lawyer of highest skills and deepest personal integrity. She maintains a calm and balanced disposition at all times. She has a reputation for being tough when it is appropriate but open and fair minded, with her office door open to the defense bar. On a personal level, she is warm and friendly. She has made good friends throughout her career because she is approachable.

As the Chief Legal Officer of a large public company, I am acutely aware of how important it is to have the federal government enforce the laws in an even handed way, assuring adherence to law and yet being open to hearing the arguments of individuals and companies who become targeted by investigations where there are credible defenses that should be reasonably considered. I would trust Loretta to strike that balance correctly, standing up for rule of law but remaining open to hearing arguments from the defense bar and reaching reasonable decisions in each case. I also believe that Loretta would have the insight and good judgment to set the law enforcement priorities that are important at this moment for the nation. This is what we would most want to see from our corporate perspective.

I feel honored to submit this letter of support for the nomination of Loretta Lynch as Attorney General of the United States. I fully support her nomination.

Very truly yours,

A handwritten signature in cursive script that reads 'Audrey Strauss'.

Audrey Strauss
EVP, Chief Legal Officer and
Corporate Secretary



Serving the courts and legal community
of the Second Circuit since 1932

Federal Bar Council

VILIA B. HAYES
President

JOAN R. SALZMAN
Executive Director

January 14, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

Re: Loretta Lynch

Dear Chairman Grassley and Ranking Member Leahy:

The undersigned are the current President and former Presidents of the Federal Bar Council who are or were in private practice, including a former Dean and President of a law school. We write in support of the nomination of Loretta Lynch to be the Attorney General of the United States. The Federal Bar Council is a bar association of more than 3500 lawyers who practice and the judges who serve in the federal courts of the Second Circuit. The undersigned include Republicans, Democrats and Independents.

We all know Loretta personally and have interacted with her for many years. Among other things, Loretta has been a Trustee of the Federal Bar Council and Director of its sister organization, the Federal Bar Foundation. She has served as Secretary of the Council and as a member of its Executive, Awards and Nominating Committees. Loretta has also served on its Second Circuit Courts Committee and the Planning Committee for the Council's annual Winter Bench and Bar Conference, where she has spoken on panels.

In 2012, Loretta received the Federal Bar Council's Emery Buckner Medal for Outstanding Public Service. Other recipients of this award have included Governors Thomas E. Dewey, Nelson A. Rockefeller, Richard L. Thornburgh and Mario M. Cuomo; Senators Jacob K. Javits, James L. Buckley, Abraham Ribicoff, Daniel Patrick Moynihan, George J. Mitchell, Charles E. Schumer and Alfonse D'Amato; Ambassadors W. Averell Harriman, Francis C.P. Plimpton, George F. Keenan and Elliot Richardson; Mayor Edward I. Koch; and Police Commissioners Robert J. McGuire and Raymond W. Kelly. In receiving that award, Loretta gave an extraordinary speech, a copy of which is enclosed.

We believe that Loretta Lynch would be an excellent Attorney General for many important reasons, including the following: *First*, she is a person of great character, integrity and judgment who will uphold the high standards for the Justice Department in ensuring the fair, impartial and non-political administration of justice for all Americans. *Second*, she is a leader who will motivate lawyers in the Justice Department to enforce the laws of the United States in an effective and non-partisan way. *Third*, she is an extraordinary lawyer who understands difficult legal issues and has the experience and knowledge to address matters as diverse as gang-related crime, sophisticated financial frauds and national security issues. *Fourth*, she is a person who builds relationships, takes a practical approach to

complex issues and is open and accessible to everyone, while being strong and independent and always telling people exactly what she thinks. *Fifth*, she will be a tremendous spokesperson for our system of justice and the rule of law -- not only in this country but throughout the world -- and will provide a wonderful example and role model for people from all backgrounds to emulate.

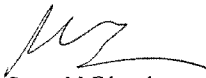
Most importantly, Loretta's record speaks for itself. As a prosecutor, she pursued and won cases involving violent crime, complex commercial fraud and public corruption. As a United States Attorney, she led successful efforts to prosecute organize crime, hate crimes, human trafficking and threats to our national security, trying more terrorism cases since 9/11 than any other office in the United States. At all times, Loretta has focused on the rights and interests of victims and has worked hard to improve community-police relations, prosecuting people who committed crimes against police officers as well as police officers who committed crimes.

As lawyers in New York, we are undeniably proud of Loretta because she is a product of our culture and our community. Loretta has been a great colleague and an outstanding United States Attorney. We endorse her, enthusiastically and without hesitation, because we think she can play the same important role for the country and will do it very well.

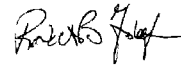
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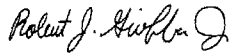
Robert J. Anello
(2012-2014)



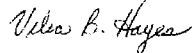
Steven M. Edwards
(1998-2000)



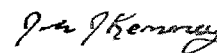
Robert B. Fiske, Jr.
(1982-1984)



Robert J. Giuffra, Jr.
(2008-2010)



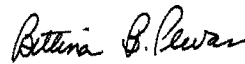
Vilia B. Hayes
(2014 - Present)



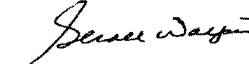
John J. Kenney
(1994-1996)



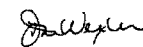
Bernard W. Nussbaum
(1990-1992)



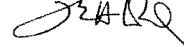
Bettina B. Plevan
(1996-1998)



Hon. Gerald Walpin
(2002-2004)



Joan G. Wexler
(2004-2006)



Frank H. Wohl
(2010-2012)



George B. Yankwitt
(1992-1994)



Mark C. Zauderer
(2006-2008)

REMARKS OF THE HONORABLE LORETTA E. LYNCH IN
RESPONSE TO THE AWARD OF THE EMORY BUCKNER
MEDAL FOR "OUTSTANDING PUBLIC SERVICE"

FEDERAL BAR COUNCIL ANNUAL THANKSGIVING LUNCHEON

WALDORF ASTORIA HOTEL
NEW YORK CITY
WEDNESDAY, NOVEMBER 21, 2012

GOOD AFTERNOON. THANK YOU SO MUCH, FRANK FOR THAT
WONDERFUL INTRODUCTION.

I WANT TO THANK THE FEDERAL BAR COUNCIL FOR THIS AWARD. I
THANK THE NOMINATING COMMITTEE FOR RECOMMENDING ME AND THE
LEADERSHIP FOR SELECTING ME. IT MEANS A GREAT DEAL TO ME. TO BE
CONSIDERED IN THE SAME VEIN AS SO MANY OTHER RECIPIENTS, MANY OF
WHOM ARE MENTORS AND FRIENDS, ALL OF WHOM ARE INSPIRATIONS, IS
TRULY HUMBLING. I ALSO WANT TO THANK THE DEDICATED ATTORNEYS AND
STAFF OF THE US ATTORNEYS OFFICE FOR THE EASTERN DISTRICT OF NEW
YORK, ON WHOSE WORK AND SHOULDERS I STAND WHENEVER I RECEIVE
ACCOLADES. MY GREATEST THANKS GO TO MY HUSBAND STEVE, WHO IS HERE
WITH ME TODAY, AND UNDERSTANDS MY DESIRE TO DO SOME GOOD IN THIS
WORLD PERHAPS BETTER THAN I DO MYSELF, AND SUPPORTS ME IN ALL MY
ENDEAVORS.

WHEN YOU RECEIVE AN AWARD LIKE THIS, NAMED FOR A LUMINARY OF THE BAR WHO LITERALLY CHANGED THE PRACTICE OF PUBLIC PROSECUTION, IT CAN BE A BIT OVERWHELMING. I KNOW WHAT LED ME INTO PUBLIC SERVICE. BUT WHAT MOTIVATED EMORY BUCKNER? WHAT LED HIM TO CHOOSE PUBLIC SERVICE OVER PECUNIARY GAIN ON SEVERAL OCASIONS? HOW DO MY CHOICES COMPARE? MORE TO THE POINT, HOW DO I WRITE A SPEECH ABOUT IT?

AS I WAS HAVING THOSE MUSINGS ABOUT A MONTH AGO, A PACKAGE FROM OUR OWN JEANNETTE REDMOND LITERALLY LANDED ON MY DESK. I OPENED IT, AND LO AND BEHOLD, A BIOGRAPHY OF EMORY BUCKNER! WHAT PROVIDENCE! THEY HAD READ MY MIND! OR POSSIBLY MY E-MAILS.... NOW I COULD READ ABOUT EMORY BUCKNER'S LIFE AND WHAT HAD INSPIRED HIM. I FELT MY CONNECTION TO HIM GROW STRONGER. IN ADDITION, NOT ONLY WAS I LINKED TO PREVIOUS AWARD RECIPIENTS BY THIS STAGE AND THIS EVENT, I WAS LINKED BY THE EXPERIENCE OF LEARNING ABOUT EMORY BUCKNER, OF PERUSING THIS BIOGRAPHY AND HAVING THE SAME TOME IN MY LIBRARY AS WELL.

AND THEN, UPON A CLOSER INSPECTION OF THE BOOK, I NOTICED IT WAS NOT EXACTLY IN PRISTINE CONDITION. "NO MATTER," I THOUGHT, "I MYSELF

HAVE SHOPPED THE AMAZON USED BOOK CATEGORY MANY A TIME.” AND THEN I ACTUALLY READ THE LETTER FROM JEANNETTE, WHEREIN SHE INFORMED ME THAT SHE WAS LOANING ME THE BOOK, AND I SHOULD RETURN IT IMMEDIATELY AFTER THIS EVENT. “OH,” I THOUGHT. “I ACTUALLY WILL BE PERUSING THE SAME VOLUME AS PAST AWARD RECIPIENTS!” OF COURSE, THIS ONLY INCREASED THE PRESSURE – NOT JUST TO WRITE A SPEECH BUT TO RETURN THE BOOK ON TIME, SO THAT NEXT YEAR’S RECIPIENT CAN BE SIMILARLY INSPIRED.

BUT NOT TO WORRY; UNKNOWINGLY, JEANNETTE SENT THIS BOOK TO THE DAUGHTER OF A LIBRARIAN. IN FACT, THE ONLY TIME MY MOTHER EVER RAISED HER VOICE TO HER THREE CHILDREN WAS WHEN ONE OF US WAS LATE RETURNING A LIBRARY BOOK. SO JEANNETTE, YOU WILL GET THIS BOOK BACK ON TIME OR MY MOTHER WILL DEAL WITH ME. YOU HAVE UNLEASHED THE GREATEST MOTIVATOR OF ALL.

THANKS TO JEANNETTE’S TEMPORARY GENEROSITY, I WAS ABLE TO READ ABOUT EMORY BUCKNER – HIS LIFE AND TIMES, HIS FAMILY, HIS CASES, AND WHAT LED HIM TO FOCUS ON THE IMPORTANCE OF PUBLIC SERVICE AND THE VALUES HE BROUGHT TO THE US ATTORNEY’S OFFICE DURING HIS TENURE.

I WAS CURIOUS TO FIND THE CONNECTIONS BETWEEN HIM AND ME, THE COMMON THREAD, IF YOU WILL. I FOUND WHAT YOU WOULD THINK, AND MUCH MORE.

IF YOU WERE TO OUTLINE WHAT YOU WOULD THINK WERE THE GREATEST SIMILARITIES BETWEEN EMORY BUCKNER AND MYSELF, YOU WOULD PROBABLY START WITH THE FACT THAT WE HAVE BOTH SERVED AS US ATTORNEYS IN NEW YORK CITY. YOU MIGHT FOCUS ON THE FACT THAT WE BOTH STRESSED TRAINING, PROFESSIONALISM, AND REAL RESPONSIBILITY FOR YOUNG LAWYERS IN OUR OFFICES. SOME MIGHT NOTE THAT HE SERVED AS US ATTORNEY IN THE SOUTHERN DISTRICT FOR TWO YEARS, AND MY INITIAL TENURE IN BROOKLYN WAS ALSO TWO YEARS. ALL OF THAT WOULD BE TRUE, YET I FOUND A DEEPER CONNECTION THAN THAT.

YOU MIGHT BE PUZZLED BY THAT STATEMENT. WHAT ELSE COULD CONNECT A DAUGHTER OF THE SOUTH TO THE MIDWESTERN LAWYER?

I LEARNED, HOWEVER, THAT HE AND I ARE ACTUALLY NOT AS DISTANT AS THAT. IN FACT, BOTH OF US HAVE OUR ROOTS IN NORTH CAROLINA. BUCKNER'S FAMILY LIVED THERE DURING THE NINETEENTH CENTURY, ACTUALLY LIVING FOR A TIME ON A FARM WEST OF RALEIGH UNTIL THE MID

1830'S. I GREW UP IN DURHAM, NOT ON A FARM BUT WITH THOSE ROOTS, ALSO A LITTLE WAYS WEST OF RALEIGH.

I LEARNED, HOWEVER, OF AN EVEN DEEPER CONNECTION, WHICH MADE ME UNDERSTAND HIM EVEN MORE AND WHICH, DESPITE THE DIFFERENCES IN OUR LIFE AND TIMES, WOULD MAKE HIM KNOW ME AS WELL.

EMORY BUCKNER AND I ARE BOTH THE CHILDREN OF PREACHERS, AND THE GRANDCHILDREN OF PREACHERS, AND THE SIBLINGS OF PREACHERS. BUCKNER'S BROTHER WAS THE THIRD GENERATION OF PREACHERS IN HIS FAMILY, WHILE MY BROTHER IS THE FIFTH GENERATION IN OURS.

BUCKNER'S GRANDFATHER, WHO MOVED FROM NORTH CAROLINA TO MISSOURI AS A YOUNG MAN, WAS PRIMARILY A FARMER BUT SERVED AS A LAY PREACHER DURING CAMP MEETINGS. MY GRANDFATHER WAS A MINISTER AND A SHARECROPPER IN RURAL NORTH CAROLINA. LIKE ALL GOOD PREACHERS, BOTH WERE DIRT POOR.

BOTH OUR FATHERS BECAME ESTABLISHED MINISTERS AT SETTLED CHURCHES. BOTH OUR FAMILIES DETERMINED WE SHOULD HAVE THE BEST EDUCATION POSSIBLE, EVEN IF IT MEANT LEAVING HOME.

FROM THIS WORLD, EVEN IF ONE IS NOT DEVOUT, ONE GAINS A SENSE THAT WE ARE ALL HERE TO WORK FOR SOMETHING GREATER THAN

OURSELVES. ONE IS TAUGHT THAT SERVICE IS THE RENT WE PAY FOR LIVING HERE ON THIS EARTH, AND THAT HELPING SOMEONE ELSE IS THE BEST WAY TO FEEL BETTER ABOUT ONE'S SELF.

EMORY BUCKNER KEPT A PICTURE OF HIS FATHER IN HIS OFFICE, AND OFTEN REFERRED TO HIM IN ORAL ARGUMENT. SO TOO, HAS MY FAMILY BEEN AN INSPIRATION FOR ME.

THERE ARE THOSE WHO SAY THAT PUBLIC SERVICE REQUIRES GREAT SACRIFICES, AND IT DOES.

BUT WHEN I COMPARE THE SACRIFICES OF SALARY AND TIME TO THOSE MY FAMILY HAS MADE OVER THE GENERATIONS, ALL SO THAT THE NEXT GENERATION COULD HAVE A BETTER LIFE, THOSE PALE BY COMPARISON.

MY FATHER TELLS THE STORY OF MY GREAT GREAT GRANDFATHER, THE FIRST GENERATION OF PREACHERS WE CAN IDENTIFY IN THE FAMILY, WHO WAS A FREE BLACK MAN IN ANTEBELLUM NORTH CAROLINA. WHILE IT IS UNCLEAR HOW HE CAME TO HAVE HIS FREEDOM, IT CERTAINLY GAVE HIM A LIFE THOSE STILL ENSLAVED DID NOT HAVE. HE WOULD HAVE LIVED HIS LIFE AS A FREE MAN, BUT HE WAS TO MEET MY GREAT GREAT GRANDMOTHER, THE WOMAN HE WANTED TO MARRY. AND WHILE HE WAS FREE, SHE WAS NOT, BUT WAS STILL

ENSLAVED. UNABLE TO PURCHASE HER, IN ORDER TO MARRY HER HE HAD TO STAY ON AND RE-ENTER BONDAGE.

THAT'S A SACRIFICE.

AND I WILL CONFESS I NEVER UNDERSTOOD IT, UNTIL I MET MY OWN HUSBAND, AND I REALIZED THAT WHEN YOU FIND THE PERSON WHO TRULY HAS YOUR HEART, NOT ONLY ARE YOU ALWAYS HOME, YOU ARE ALWAYS FREE.

MY GREAT GREAT GRANDFATHER SACRIFICED HIS FREEDOM FOR THE WOMAN HE LOVED AND THE FAMILY HE WANTED. IF HE COULD DO THAT TO HAVE THE FUTURE OF HIS CHOICE, THEN NOTHING I HAVE GIVEN UP FEELS LIKE A LOSS TO ME.

SOME SAY THAT PUBLIC SERVICE CARRIES SOME RISK. ONE IS IN THE PUBLIC EYE OFTEN TAKING UNPOPULAR POSITIONS. THESE COULD IMPACT ONE'S CHANCES TO RETURN TO PRIVATE LIFE. SOMETIMES THERE IS PHYSICAL RISK AS WELL, AS WE HAVE SEEN WITH RECENT CASE INVOLVING THREATS TO BOTH A JUDGE AND AN AUSA IN MY OWN DISTRICT.

MY GRANDFATHER, THE SHARECROPPER IN RURAL NORTH CAROLINA WHO BUILT HIS CHURCH BESIDE HIS HOUSE, RISKED A LOT FOR OTHERS. IN RURAL NORTH CAROLINA IN THE 1930'S, THERE WASN'T A LOT OF JUSTICE FOR

BLACK PEOPLE CAUGHT UP, AS HE USED TO SAY "IN THE CLUTCHES OF THE LAW." AN ACCUSATION COULD MEAN YOUR LIFE, WHETHER TRUE OR NOT. WHEN PEOPLE WERE IN TROUBLE THEY WOULD OFTEN COM E TO MY GRANDFATHER, AND HE WOULD HIDE THEM UNTIL THEY COULD LEAVE TOWN. MY FATHER RECALLS THAT THE SHERIFF WOULD OFTEN COME TO HIM AND ASK," GUS, HAVE YOU SEEN SO AND SO?" AND MY GRANDFATHER WOULD STAND UP AND SAY "NO," WHEN SO AND SO WAS HIDING UNDER THE FLOORBOARDS. HE HAD 8 CHILDREN AND NO MONEY AND AS A SHARECROPPER WAS DEPENDENT ON BEING HIRED TO WORK BY WHITE MEN IN THE COUNTY. HE RISKED A LOT BECAUSE HE BELIEVED IN JUSTICE AND FAIRNESS. IF HE COULD RISK SO MUCH FOR OTHERS AND FOR THE PRINCIPLES OF JUSTICE, SO HARD TO ACHIEVE IN AN UNJUST WORLD, NOTHING I COULD FACE RAISES ANY FEAR WITHIN ME.

THERE ARE THOSE WHO SAY THAT PUBLIC SERVICE CAN BE UNCERTAIN, FRUSTRATING AND UNFULFILLING. ONE CAN GRIND AWAY FOR A PRINCIPLE OR FOR A CAUSE AND ULTIMATELY NOT EFFECT MUCH REAL CHANGE.

MY OWN FATHER, AS A YOUNG PREACHER IN GREENSBORO NORTH CAROLINA, OPENED HIS CHURCH TO STUDENTS AT A&T COLLEGE AND THE NAACP AS THEY PLANNED THEIR BOYCOTTS, MEETINGS TO WHICH HE USED TO

TAKE ME AS A TODDLER, RIDING ON HIS SHOULDERS. WE OFTEN FORGET THAT IN THOSE DAYS NO ONE KNEW HOW THE CIVIL RIGHTS MOVEMENT WOULD TURN OUT. THE ACHIEVEMENTS WE LOOK BACK ON TODAY AS INEVITABLE WERE NOT ASSURED IN THE MINDS OF EVERYONE. IT WAS A TIME OF GREAT UNCERTAINTY. BUT THERE WAS NEVER ANY DOUBT AS TO WHAT MY FATHER WOULD DO. HE FOCUSED NOT ON THE CHANCE OF VICTORY, BUT THE RIGHTEOUSNESS OF THE CAUSE AND THE NOBILITY OF THE EFFORT.

MY FATHER HAS ALWAYS BELIEVED THAT ACTION SHOULD MATCH THOUGHT, WHICH IS HOW, ONE SPRING AFTERNOON IN THE MID 1970'S MY MOTHER PICKED UP THE AFTERNOON PAPER TO LEARN THAT HER HUSBAND HAD DECIDED TO RUN FOR MAYOR OF OUR TOWN. THE INCUMBENT WAS UNOPPOSED AND MY DAD DIDN'T THINK HE'D DONE A GOOD JOB. RATHER THAN CRITICIZE FROM THE OUTSIDE, HE FELT HE SHOULD MATCH HIS PRINCIPLES WITH ACTION.

IF HE COULD STEP OUT ON PRINCIPLE WITHOUT REGARD FOR THE CONSEQUENCES, THEN I HAVE NO IMPEDIMENT TO THE PURSUIT OF JUSTICE, WHICH IS NOT DEPENDENT ON ANY VERDICT, OF EITHER A JURY OR POPULAR OPINION.

PEOPLE OFTEN NOTE THAT PUBLIC SERVICE WORK IS HARD, IT IS DIFFICULT AND ONE COULD WORK AS HARD FOR GREATER COMPENSATION OR GREATER FAME.

THE WOMAN WHO PICKED UP THAT AFTERNOON NEWSPAPER, MY MOTHER, IS ALSO MY INSPIRATION. LIKE EMORY BUCKNER, SHE KNEW THAT EDUCATION WAS THE WAY OUT OF HER RURAL NORTH CAROLINA LIFE, AND SHE PINNED HER HOPES ON COLLEGE. SHE WORKED PART TIME JOBS. SHE SAVED HER MONEY. SHE TALKS OF PEOPLE FROM HER CHURCH COMING UP TO HER TO GIVE HER A DIME OR A QUARTER, TO PUT TOWARDS COLLEGE, BECAUSE THE WHOLE COMMUNITY WAS COMMITTED TO SEEING HER SUCCEED. SHE WAS DETERMINED THAT HER CHILDREN WOULD HAVE DIFFERENT CHOICES. ONE SUMMER WHEN SHE WAS IN HIGH SCHOOL, SHE EVEN PICKED COTTON TO MAKE MONEY. PICKING COTTON IS HARD, BACK BREAKING WORK. COTTON IS SOFT, BUT THE BOLLS ARE SHARP, AND WILL SLICE YOUR HANDS TO RIBBONS, AND THE PICKING IS DONE IN THE HEAT OF THE DAY AT THE HEIGHT OF THE SUMMER. YOU ARE BENT OVER WITH THE SACK OVER YOUR BACK, TRYING TO FILL IT AS FAST AS YOU CAN BECAUSE THAT'S HOW YOU MAKE MONEY. I WAS A CHILD WHEN SHE TOLD ME THIS STORY, AND AS I RECALL I TURNED UP MY NOSE AS ONLY A TWELVE YEAR OLD DAUGHTER CAN, AND SAID "EEUW, WHY

WOULD YOU EVER PICK COTTON?" AND SHE LOOKED AT ME AND SAID, "SO THAT YOU WOULD NEVER HAVE TO."

AND I NEVER HAVE.

IF SHE COULD DO THAT FOR ME, THEN THE LATE NIGHTS, THE PRESS OF RESPONSIBILITY, ANY BURDENS OF LEADERSHIP I MIGHT FEEL ARE ABSOLUTELY WEIGHTLESS.

MY OWN TWO BROTHERS – ONE A MINISTER LIKE BUCKNER'S, THE OTHER A NAVY SEAL LIKE NO OTHER – ALSO HAVE GIVEN ME A GREAT DEAL TO LIVE UP TO.

ALL OF WHICH EMORY BUCKNER, SON AND GRANDSON OF FARMERS AND PREACHERS, PUSHED NOT JUST TO EXCEL BUT TO ALSO LIFT OTHERS UP, WOULD HAVE UNDERSTOOD.

HE WOULD HAVE UNDERSTOOD WHY I WENT TO THE RWANDAN WAR CRIMES TRIBUNAL, WHERE I MET OTHER ROLE MODELS, ORDINARY PEOPLE WHO LIVED THROUGH EXTRAORDINARY TRIAL AND TRIBULATION, WHO MADE ANY SACRIFICE I HAVE CONSIDERED AS SUCH COMPLETELY INCONSEQUENTIAL. I LEARNED TO BE A PROSECUTOR IN BROOKLYN, AND I RECALL SPENDING TIME WITH PEOPLE WHO TOLD ME HOW THEY'D BEEN TRAINED IN THE MOST EFFICIENT WAY TO KILL SOMEONE, AND DISPOSE OF BODIES. I SPENT TIME

WITH THE FAMILIES OF MURDER VICTIMS, AND SAT WITH THEM AND SOMETIMES CRIED WITH THEM. YET NOTHING CAN PREPARE YOU TO HEAR THE STORY OF A WOMAN WHO SURVIVED AN ATTACK CARRIED OUT ON A CROWD OF PEOPLE IN A CHURCHYARD BY HIDING UNDER A PILE OF DEAD BODIES AND PRETENDING TO BE ONE OF THEM. OR TO HEAR THE STORY OF A WOMAN WHOSE EMPLOYER PROMISED TO SMUGGLE HER OUT OF THE COUNTRY, AWAY FROM THE GENOCIDE BUT INSTEAD TOOK HER MONEY AND BETRAYED HER TO THE KILLERS. SHE NARROWLY ESCAPED WITH HER LIFE, AND SHOWED ME THE MARKS STILL ON HER SKULL WHERE THE MACHETE NEARLY ENDED HER TIME ON THIS EARTH. STILL MISTRUSTFUL OF THE TRIBUNAL SYSTEM, THESE PEOPLE AND SO MANY MORE TOLD THEIR STORIES TO ME IN THE HOPES IT WOULD HELP SOMEONE ELSE AND BRING JUSTICE TO OTHER VICTIMS. IN THAT WAY, I WAS GIVEN BOTH THE GIFT OF THEIR TRUST AND THE OPPORTUNITY TO SERVE.

ALL OF THAT EMORY BUCKNER WOULD HAVE UNDERSTOOD.

HE WOULD HAVE UNDERSTOOD AS WELL THE PRIVILEGE I WAS GIVEN WHEN I WAS ASKED TO RETURN TO THE EASTERN DISTRICT.

THE MAN WHO WROTE "CIVIL OFFICE IN TIME OF PEACE IS THE GREATEST HONOR WHICH CAN BE CONFERRED UPON A CITIZEN BY HIS COUNTRY"¹

¹ Martin Mayer, *Emory Buckner, A Biography*, 32 (1968) (quoting SDNY office newspaper Scraps 5/21/1925).

UNDERSTOOD THAT WHEN YOU ARE AT THE HELM OF AN OFFICE OF DEDICATED PUBLIC PROFESSIONALS, YOU ARE NOT JUST RUNNING AN OFFICE, YOU ARE SHAPING A GENERATION. YOUR OBLIGATION IS NOT JUST TO PROCESS CASES, BUT TO TAKE YOUNG LAWYERS AND GIVE THEM THE TOOLS AND THE UNDERSTANDING TO SEE THE WHOLE CASE AND FOCUS NOT JUST ON WINNING BUT ON DOING THE RIGHT THING, BECAUSE THAT WAY NOT ONLY IS JUSTICE IS TRULY SERVED, IT IS MADE A PART OF THEM.

MY RETURN TO THE EDNY HAS BEEN WONDERFUL. I WORK WITH AN EXTRAORDINARY GROUP OF PEOPLE -- MANY OF WHOM ARE HERE TODAY -- WHO WORK ALL DAY AND WELL INTO THE NIGHT TO KEEP THIS CITY, OUR DISTRICT, THIS COUNTRY SAFE. I AM SO PROUD OF ALL THAT THEY DO -- FROM A NATIONAL SECURITY PRACTICE THAT HAS TRIED MORE TERRORISM CASES SINCE 9/11-- IN ARTICLE III COURTS -- THAN ANY OTHER OFFICE IN THE COUNTRY, TO THE LEADING MS-13 GANG PROGRAM IN THE COUNTRY, THE CRAFTING OF INSTITUTIONAL CHANGE IN THE CONSTRUCTION INDUSTRY HERE IN NEW YORK, THE PROTECTION OF THE VICTIMS OF HUMAN TRAFFICKING, THE DEFENSE OF THE GOVERNMENT IN LITIGATION, THE PROTECTION OF THE ENVIRONMENT, TO SO MANY MORE AREAS WHERE THEY ABSOLUTELY SHINE.

EVERY TIME I HAVE ASKED THEM TO DO MORE, THEY HAVE RISEN TO THE OCCASION. WHEN I HAVE ASKED THEM TO FOCUS ON OUTREACH TO OUR ARAB AND MUSLIM COMMUNITIES IN THE WAKE OF INTENSE BACKLASH FROM SOME OF THE VERY WORK WE DO, THEY HAVE ANSWERED THE CALL. WHEN I HAVE MOVED TO INSTITUTIONALIZE OUR COMMUNITY OUTREACH EFFORTS THE RESPONSE HAS BEEN OVERWHELMING, FROM WORKING WITH RE-ENTRY PROGRAMS TO STARTING OUR OFFICE'S HIGH SCHOOL MOOT COURT COACHING PROGRAM.

I COULD GO ON, BUT I HAVE TO SAY THAT I HAVE NEVER BEEN MORE PROUD OF THEM THAN IN THE PAST FEW WEEKS, AS WE HAVE ALL STRUGGLED TO RESPOND TO THE DEVASTATION WROUGHT BY SUPERSTORM SANDY. WE HAVE COLLEAGUES STILL DEALING WITH THE EFFECTS OF EVACUATION, FLOODING AND POWER OUTAGES. SOME ARE LITERALLY HOMELESS. YET FROM THE MINUTE THE WATERS RECEDED, THE RESPONSE WITHIN OUR OFFICE WAS TREMENDOUS. FROM VOLUNTEERING AT SHELTERS AND RELIEF LOCATIONS, TO HELPING FRIENDS AND COLLEAGUES PULL TREES OFF THEIR HOMES OR SALVAGE POSSESSIONS, TO COLLECTING MONIES AND CLOTHING AND SUPPLIES FOR COLLEAGUES AND FOR THE COMMUNITY, MY OFFICE HAS BEEN THERE EVERY STEP OF THE WAY. IT HAS BEEN INSPIRING TO SEE.

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I STRIVE EVERY DAY TO BE THE LEADER THEY DESERVE. THIS IS A CHALLENGE, BECAUSE THEY DESERVE THE WORLD. THEY HONOR ME WITH THEIR DEDICATION. THEY INSPIRE ME WITH THEIR COMMITMENT. AND EVERY DAY THEY TEACH ME ANEW THE JOYS OF PUBLIC SERVICE.

ALL OF THAT EMORY BUCKNER - PREACHER'S SON, LOVER OF JUSTICE, TEACHER OF YOUNG LAWYERS AND DEDICATED PUBLIC SERVANT - WOULD HAVE ABSOLUTELY UNDERSTOOD.

THANK YOU FOR HONORING ME WITH THIS AWARD IN THE NAME OF EMORY BUCKNER. LEARNING MORE ABOUT HIM TOOK ME BACK TO THE CORE OF MYSELF, AND WAS A GIFT INDEED.

AS WE BEGIN THIS HOLIDAY SEASON, I WISH YOU ALL THE LAUGHTER OF FRIENDS, THE EMBRACE OF FAMILY, AND A HAPPY THANKSGIVING. THANK YOU.

Hogan
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January 15, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

We were partners with Loretta Lynch at Hogan & Hartson before she was appointed United States Attorney for the Eastern District of New York in 2010. That same year, Hogan & Hartson merged with Lovells to become Hogan Lovells, an international law firm with more than 2500 lawyers and 40 offices worldwide. We write to provide our enthusiastic endorsement of Loretta's nomination to be the next Attorney General of the United States.

A number of us worked closely with Loretta and interacted with her both professionally and socially when she was our partner. She was a great partner with excellent skills and made enormous contributions to the culture and reputation of our firm. She was a hard worker who achieved great results for clients and commanded universal respect. She also served as a role model for younger lawyers and mentored many individually. In addition, Loretta devoted significant time to pro bono activities, including her work as special counsel to the Rwanda War Crimes Tribunal.

Loretta is a person of impeccable character and integrity. She is also a highly accomplished advocate and an extremely effective communicator. In addition, while most of her background is in the criminal area, she worked on a number of civil cases when she was our partner and demonstrated that she has the ability to understand and address complex business problems -- a characteristic that we think is important for an Attorney General in today's economic environment.

Loretta is also a terrific leader -- she inspires and motivates people. When she was our partner, people liked working with her because she was accessible, accommodating, practical and professional. She can be firm, but is not inflexible; she has good judgment, but is not judgmental; she is persistent and sticks to the agenda, but she has no hidden agendas. She is fundamentally apolitical.

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The Honorable Charles E. Grassley
The Honorable Patrick J. Leahy

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January 15, 2015

In short, we think that Loretta Lynch would be a great Attorney General. We urge the Committee to approve her nomination, so the Senate can confirm her without delay.

Very truly yours,

Stephen J. Immeit
CEO

Stuart M. Altman
Robert B. Buehler
Ty Cobb
Steven M. Edwards
Scott Friedman
David J. Hensler
Robert F. Leibenluft
Sanford Litvack
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The Honorable Charles E.
Grassley Chairman, Committee on
the Judiciary United States Senate
224 Dirksen Senate Office Building
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The Honorable Patrick J. Leahy
Ranking Member, Committee on the
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20 January 2015

Dear Chairman Grassley and Ranking Member Leahy,

I am very pleased to support the nomination of the Honorable Loretta Lynch to the Judiciary Committee for Attorney General of the United States. This Committee has now confirmed Ms. Lynch on two separate occasions for United States Attorney for the Eastern District of New York ("USA") and I urge you and the Members to confirm her once again. In my twenty-five years of public service--23 in the Department of Justice--I cannot think of a more qualified nominee to be America's chief law enforcement officer.

I first came to know Ms. Lynch when I was FBI director and she became the USA in 1999. As you know, the FBI's New York Office is the largest and most complex in the country and its success is dependent of the strong, efficient and fair leadership of the USA's offices there. Ms. Lynch's first tenure as USA was outstanding in this regard and both my NY Assistant Director and 'street Agents' then advised me that Ms. Lynch led her 160-Assistant USA office with skill, 'hands-on' leadership, fairness and independence. I have found over the years that the Agents' appraisal of their prosecutors--stellar in Ms. Lynch's case--is the best single evaluation of a US Attorney's performance.

Prior to serving as USA for the first time, Ms. Lynch distinguished herself as an excellent prosecutor as evidenced by the highly professional and effective manner in which she personally prosecuted the Abner Louma civil rights case. As USA, Ms. Lynch continued to be a hands-on prosecutor and law enforcement leader, always maintaining the respect and credibility of prosecutors and law enforcement colleagues. Last May, for example, Ms. Lynch joined me along with several of her organized crime prosecutors and FBI Agents in Palermo to honor the memory of Judge Giovanni Falcone, a great Italian law enforcement partner who was assassinated by the mafia in 1994. Ms. Lynch not only led the DOJ delegation but conducted important bilateral meetings with senior Italian law enforcement officials. This critical liaison has enabled our 20-year old US-Italian Organized Crime Working Group to be maintained at the highest operational level.

Ms. Lynch's work as a Hogan and Hartson litigation partner has also provided her with the perspective and balance which makes a great prosecutor an even greater law enforcement leader. As chairman of a large law firm and corporate defense attorney, I know that Ms. Lynch enjoyed a solid reputation as an

Philadelphia	Boston	Washington, D.C.	Los Angeles	New York	Pittsburgh
Detroit	Berwyn	Harrisburg	Orange County	Princeton	Wilmington



effective and dedicated advocate for US corporations, financial institutions and individuals being investigated by the DOJ. This experience provides her with the good judgment and knowledge to be a fair and judicious Attorney General.

Ms. Lynch returned as USA in 2010 to continue her 15 years of dedicated service to DOJ. During her second tenure, Ms. Lynch distinguished herself once again as a truly independent, fair and successful prosecutor and leader. Ms. Lynch has worked tirelessly to defend FBI Agents, New York Police Department officers, DEA Agents and US Marshals against false allegations by subject drug dealers. This has earned her the lasting respect and admiration of the thousands of law enforcement officers who work in New York City. Ms. Lynch has protected New Yorkers against terrorism by aggressively and successfully prosecuting the 2009 al-Qaeda plot to blow up the NYC subway system, which would have resulted in devastation and mass casualties. In the area of public corruption, Ms. Lynch has gained the convictions of 9 major state and federal elected officials, including the NY State Senate Majority Leader. Moreover, Ms. Lynch's prosecution of public officials underscores the independent and professional manner in which she has enforced this critical program: as the Wall Street Journal commented in November, 2014, "Few federal prosecutors have criminally charged as many senior elected Democrats as Ms. Lynch."

Ms. Lynch's current service as USA has also demonstrated her strong commitment to the even-handed enforcement of every major criminal and civil program of significance. Under her leadership, the USA has achieved record-breaking successes in prosecuting important cases in the areas of mortgage and stock fraud, money-laundering, Bank Secrecy Act, corporate fraud, anti-proliferation technology trafficking, hate crimes, civil rights, drug forfeitures, violent crime and gang enterprises and equal employment opportunity. Beyond these more traditional matters, Ms. Lynch has also spearheaded cutting-edge cybercrime prosecutions, including a \$45 million theft which targeted a global payment process. The USA under Ms. Lynch's direction has also consistently pursued cases which protect the weak and vulnerable, especially prosecutions regarding human-trafficking, crimes against children and the exploitation of alien workers.

Finally, Ms. Lynch's service on the Attorney General's Advisory Committee has provided a Department-wide overview and understanding of all the relevant policy, budgetary and enforcement issues, which will allow her to 'hit the ground running' as Attorney General.

In sum, I am certain that Ms. Lynch will be an outstanding Attorney General, of whom we will be as proud of as we are now for her double service as USA. I have spoken with several very senior FBI leaders and Agents, NYPD, Marshal and USAO officials in both the Eastern and Southern Districts of New York, all of whom enthusiastically support Ms. Lynch's nomination. I have also spoken with several of my former judicial colleagues who echo this support, and note that Ms. Lynch has gained a terrific reputation for effectively, fairly and independently enforcing the law. We are all confident that Ms. Lynch will pursue justice as our Attorney General consistent with her long record of excellent public service.

I am happy to give Ms. Lynch my highest personal and professional recommendation for Attorney General and welcome the Committee's inquiry for any additional information.

Respectfully,

A handwritten signature in cursive script, appearing to read "Louis J. Freeh".

Louis J. Freeh
Chairman Emeritus
(302) 824-7144

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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POSTAL SERVICE
Postal Inspection
Postal OIG
SOCIAL SECURITY ADMINISTRATION-OIG
STATE DEPARTMENT
Bureau of Diplomatic Security & OIG
TRANSPORTATION-OIG
TREASURY
FISCAL & OIG
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TIGTA
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U.S. PROBATION & PRETRIAL SERVICES
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ROB NYDLER
National Awards Director
CHRISTINA TWEED
National Recruitment Director
RASHED THIR
General Counsel
LAWRENCE BERGER
Public Information Officer
RUSSELL MATHINGLEY

January 22, 2015

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

In my capacity as the National President of the Federal Law Enforcement Officers Association (FLEOA), I am writing to you to convey our full support for the Honorable Loretta Lynch as the next Attorney General of the United States.

Ms. Lynch is currently serving a commendable second tour of duty as the United States Attorney in the Eastern District of New York. FLEOA stands behind her proven leadership and her support for those who investigate and enforce the federal statutes. She has done a remarkable job as the lead prosecutor overseeing a challenging judicial district that would never be mischaracterized as a "soft ground ball."

In 2011, Ms. Lynch was selected as the FLEOA Foundation's Law Enforcement Honoree of the Year. Her accomplishments and her leadership continue to resonate in the law enforcement community, and she possesses the requisite institutional knowledge that is required of the position of Attorney General.

After the President announced his nomination of Ms. Lynch, I stated, "In light of the turbulent climate confronting law enforcement, we need a strong leader like U.S. Attorney Lynch to bring a calm, well-informed perspective to the Attorney General position. Knowing U.S. Attorney Lynch's fine character and judicial talents, I foresee her balancing her title with equal strength both as our nation's lead Attorney and as our legal General."

The Federal Law Enforcement Officers Association (www.fleoa.org) is the largest nonprofit, nonpartisan professional association that exclusively represents over 26,000 active and retired federal law enforcement officers from over 65 Agencies.

Respectfully,

Jon Adler
National President

January 22, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

Re: Loretta Lynch

Dear Chairman Grassley and Ranking Member Leahy:

We are all the living past Presidents of the New York City Bar Association. The New York City Bar Association was founded in 1870 in response to growing public concern over corruption in the justice system in New York City. Today the Association has over 24,000 members and engages in a variety of activities, including the operation of more than 150 committees that focus on substantive areas of the law, a Legislative Affairs department that acts as a liaison between the committees and the New York State Legislature and New York City Council, a Judiciary Committee that evaluates candidates for judgeships at both the federal and state levels, a member services function that offers career development workshops and networking events, an accredited continuing legal education program and a legal referral service.

As a group we represent all aspects of the political spectrum and the practice of law. We include Republicans and Democrats, liberals and conservatives, civil and criminal litigators and large and small firm practitioners. We also include former judges, the former dean of a law school and the former Corporation Counsel of the City of New York.

We write in support of the nomination of Loretta Lynch as Attorney General of the United States. Many of us know her and have worked with her personally -- she is a past member of the City Bar's Executive Committee -- but more importantly we know her record and her reputation in the New York legal community. Loretta Lynch has an unparalleled record of fair and effective enforcement of the law. She has done an excellent job in her two terms as United States Attorney for the Eastern District of New York and has actively sought to protect the interests of victims of crime from all segments of society, from the victims of gang warfare to major corporations that have been the victims of cyber-terrorism and fraud. She has been apolitical and non-partisan in her approach to law enforcement and has won the confidence of the broad and diverse community that she serves. She also has been an active participant in public dialogue, appearing frequently at public forums and


The Honorable Charles E. Grassley
The Honorable Patrick J. Leahy


January 22, 2015


events, and has articulated the principles of our justice system in a way that we have often found inspiring.


We could go on for pages identifying the reasons why Loretta Lynch should be Attorney General, but suffice it to say that we think she is an excellent choice. She will serve the country with honor and distinction and will provide a shining example of why our system of justice is the best in the world. We urge the Senate Judiciary Committee to approve her nomination wholeheartedly and without reservation.

Very truly yours,



Michael A. Cardozo

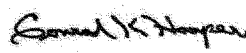

Michael A. Cooper



Louis A. Craco, Sr.

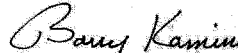

Evan A. Davis

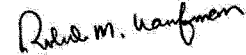

Carey R. Dunne



John D. Feerick


Conrad K. Harper



Patricia M. Hynes


The Honorable Barry Kamins


Robert M. Kaufman


Bettina B. Plevan


The Honorable E. Leo Milonas


Barbara Paul Robinson


Samuel W. Seymour

January 22, 2015

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, DC 20510

RE: LORETTA LYNCH

Dear Chairman Grassley and Ranking Member Leahy:

We write to support the confirmation of Loretta Lynch as Attorney General of the United States.

We are all former United States Attorneys. Some of us served in Republican administrations, some in Democratic administrations. We all share a deep commitment to the rule of law and an abiding respect for the Department of Justice.

A few of us served with Ms. Lynch in the Clinton administration. Others had dealings with her when she was in private practice and still others when she served again as U.S. Attorney in the E.D.N.Y.. We firmly believe that Ms. Lynch will make an outstanding Attorney General. And, we are very pleased that the President has nominated a sitting U.S. Attorney to be Attorney General. Indeed, if confirmed, this would be the first time in almost two centuries that a U.S. Attorney would have been directly elevated to Attorney General.

As you might expect, we are proud of our service in the Justice Department and believe that serving as U.S. Attorney provides a strong background to be Attorney General. Both because of that and because of her own strong personal qualifications, we believe that Ms. Lynch has the experience, temperament, independence, integrity, and judgment to immediately assume this critically important position.

We strongly support her speedy confirmation.

Sincerely,

David B. Barlow
United States Attorney, D. UT (2011-2014)

Wayne A. Budd
United States Attorney, D. MA (1989-1992)

Mark T. Calloway
United States Attorney, W.D. NC (1994-2001)

Paul K. Charlton
United States Attorney, D. AZ (2001-2007)

Paul E. Coggins
United States Attorney, N.D. TX (1993-2001)

Robert C. Corrente
United States Attorney, D. RI (2004-2009)

The Honorable Charles Grassley
The Honorable Patrick J. Leahy
Page 2 – 1/22/15

E. Bart Daniel
United States Attorney, D. SC (1989-1992)

Patrick J. Fitzgerald
United States Attorney, N.D. IL (2001-2012)

Walter C. Holton
United States Attorney, M.D. NC (1994-2001)

Scott R. Lassar
United States Attorney, N.D. IL (1997-2001)

Deborah Rhodes
United States Attorney, S.D. AL (2005-2009)

Richard B. Roper
United States Attorney, N.D. TX (2004-2009)

Jack W. Selden
United States Attorney, N.D. AL (1992-1993)

Charles J. Stevens
United States Attorney, E.D. CA (1993-1997)

Gregory A. Vega
United States Attorney, S.D. CA (1999-2001)

Joseph D. Whitley
United States Attorney, N.D. GA (1990-1993)
M.D. GA (1981-1986)

Richard H. Deane, Jr.
United States Attorney, N.D. GA (1998-2001)

Thomas B. Heffelfinger,
United States Attorney, D. MN (2001-2006)

G. Douglas Jones
United States Attorney, N.D. AL (1997-2001)

Matthew D. Orwig
United States Attorney, E.D. TX (2001-2007)

Jose de Jesus Rivera
United States Attorney, D. AZ (1998-2001)

Richard A. Rossman
United States Attorney, E.D. MI (1980-1981)

Donald K. Stern
United States Attorney, D. MA (1993-2001)

Jeffrey A. Taylor
United States Attorney, D. DC (2006-2009)

Kenneth L. Wainstein
United States Attorney, D. DC (2004-2006)

United Technologies Corporation
United Technologies Building
Mail Stop 524
Hartford CT 06101
(860) 728-7809



Kevin J. O'Connor
Vice President, Global Ethics & Compliance

January 22, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

I write in support of the nomination of United States Attorney Loretta Lynch to be our nation's next Attorney General. I have had the pleasure of serving in the Department of Justice in many different capacities (including as Associate Attorney General and United States Attorney for Connecticut) and have developed a tremendous appreciation and respect for the important mission of the Department as well as the hard work and faithful pursuit of justice by the thousands of prosecutors and public servants who are privileged to work there. These dedicated men and women deserve to work for an Attorney General who understands the need for and is willing to promote the independent, effective and fair enforcement of the law. Ms. Lynch, in her two stints as United States Attorney for the Eastern District of New York, has clearly demonstrated that she possesses these traits, and her experience, independence, judgment and temperament make her uniquely qualified to serve as Attorney General.

Additionally, as the chief ethics and compliance officer of a large, global company based in the United States, I fully appreciate the need for an Attorney General who will employ a balanced, open-minded approach to enforcing the law against all parties, whether they be corporations or individuals. Based on her proven record of being tough but fair, I have full confidence that, should she be confirmed as Attorney General, Ms. Lynch will do just that.

Finally, while I have only met Ms. Lynch on a few occasions, she has always impressed me for both her substance and her style. For starters, she is incredibly modest considering her many accomplishments. She is also kind, courteous and respectful to everyone she meets – whether in the courtroom or in the community.

The Honorable Charles E. Grassley
The Honorable Patrick J. Leahy
January 22, 2015
Page 2

For these reasons, I respectfully request that the Judiciary Committee favorably recommend Ms. Lynch to be the next Attorney General of the United States.

Very truly yours,

A handwritten signature in black ink, appearing to read "KJOC", written over a faint, larger signature.

Kevin J. O'Connor



**Empowering
Women to
the Highest
Levels**

Elizabeth Anne "Betiayn" Tursi
National Chair and Co-Founder
718.645.4959
elizabethtursi@aol.com
www.wilef.com

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January 22, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

Re: Loretta Lynch

Dear Chairman Grassley and Ranking Member Leahy:

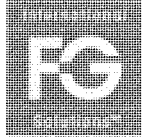
As National Chair and Co-Founder of the Women in Law Empowerment Forum (hereinafter referred to as "WILEF"), I had the great honor of interviewing Loretta Lynch for our *In Conversation With WILEF* East June 2014 program. Over the years, I have interviewed many high profile women in law and business. Our audience was comprised of young woman lawyers who came to our event to be inspired and, indeed, Loretta Lynch delivered.

It is undisputed that Loretta Lynch is a great lawyer and a great leader. In her remarks to the WILEF audience, she talked about her career path, the challenges she faced and her love for the law. She spoke about achieving one's goals while being part of a team which is the mantra for all women who aspire to greatness.

I reviewed several of the letters you received in support of her endorsement as Attorney General. I am a woman of few words, but make no mistake, Loretta Lynch will be an outstanding Attorney General. Above and beyond her brilliance, integrity and character, she is the right person at the right time to head the Department of Justice.

Sincerely,

Elizabeth Anne "Betiayn" Tursi
National Chair and Co-Founder,
Women in Law Empowerment Forum



January 23, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, D.C. 20510


Dear Chairman Grassley and Ranking Member Leahy:

I write this letter in full support of the nomination of Loretta E. Lynch to be Attorney General of the United States. I have known Loretta for over a decade and have had the privilege of serving with her in the Department of Justice in my capacity as United States Marshal for the Southern District of New York where I served for more than twenty years until my retirement in 2013.

During that time, I personally observed Loretta discharge her duties as United States Attorney in the District in which I reside and attest to her deep conviction for truth, justice, and fairness. Loretta is a person of great integrity who is widely respected among her peers in federal, state and local law enforcement. On a personal level, she is compassionate, warm and approachable. Her management and leadership of the United States Attorney's Office and her knowledge and determination to enforce the laws of the United States in a non-partisan way make her an exceptional candidate for Attorney General.

Loretta E. Lynch has already been confirmed by the Committee on the Judiciary on two separate occasions for United States Attorney for the Eastern District of New York and I urge you to confirm her once again to be the next Attorney General of the United States where she will serve with great distinction.

I welcome any inquiries you or the Committee may have.

Very truly yours,

Joseph R. Guccione
Managing Director

3711 Kennett Pike, Suite 130
Wilmington, DE 19807
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350 Fifth Avenue, Suite 3100
New York, NY 10118
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600 14th Street NW, Suite 600
Washington, DC 20005
+1 (202) 509-9734

January 23, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

Re: Nomination of Loretta Lynch for Attorney General

Dear Chairman Grassley and Ranking Member Leahy:

The undersigned are former Presidents of the New York County Lawyers' Association (NYCLA), which is a bar association of more than 9,000 lawyers, making it one of the largest county bar associations in the country. As a group we include Republicans, Democrats and Independents. We are or were law firm partners representing diverse practice areas, federal and state prosecutors, public defenders and law school professors. We write in support of the nomination of Loretta Lynch to be the Attorney General of the United States.

Many of us know Loretta Lynch personally or have interacted with her professionally. We all know of her stellar reputation in the New York legal community. As a lawyer and prosecutor, she is known for her integrity, professionalism, unimpeachable ethics and commitment to justice. Under her leadership, the United States Attorney's Office has successfully prosecuted cases involving public corruption, terrorism, organized crime, violent gangs and civil rights violations. Loretta Lynch has earned the respect of the defense bar, members of the judiciary, and the public she serves because of her pursuit of justice without fear or favor. Her reputation for competence, compassion, fairness and non-partisanship is well deserved.

In 2004 and in 2005, Ms. Lynch was among the outstanding lawyers whom NYCLA honored at our annual dinner. In 2012, Ms. Lynch was the recipient of NYCLA's Ida B. Wells-Barnett Award in recognition of a career that reflects the spirit and courageousness of the anti-lynching civil rights activist. In 2014, because of her distinguished career in public service and in private practice, NYCLA invited Ms.

Lynch to give NYCLA's 51st Annual Charles Evans Hughes Memorial lecture. Her lecture was powerful and inspirational.

Loretta Lynch has served with honor and distinction in both of her terms as United States Attorney for the Eastern District of New York. We are confident that she will continue her excellent public service as Attorney General of the United States.

Very truly yours,

Arthur Norman Field (1990-1992)
Klaus Eppler (1995-1996)
John J. Kenney (1996-1997)
Rosalind S. Fink (1997-1998)
Stephen D. Hoffman (1998-2000)
Craig A. Landy (2000-2002)
Catherine A. Christian (2007-2008)
Ann B. Lesk (2008-2010)
James B. Kobak Jr (2010-2011)
Stewart D. Aaron (2011-2013)
Barbara Moses (2013-2014)

John P. Gilbride
130 Hillyer Circle
Middletown, NJ 07748

January 26, 2015

Senator Charles E. Grassley
Chairman Member Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Support of United States Attorney Loretta Lynch for Attorney General

Dear Senator Grassley,

I am writing in enthusiastic support of United States Attorney (USA) Loretta Lynch for the position of United States Attorney General.

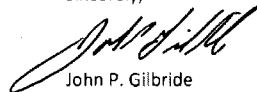
I worked closely with USA Lynch for many years while I was assigned as Special Agent in Charge of the Drug Enforcement Administration's (DEA) New York Office. I have since retired from DEA, and currently hold the position of Global Head of Financial Intelligence for Morgan Stanley. During the years I worked along with USA Lynch, I was impressed with her professional demeanor, enthusiastic personality, communication skills and dedication to a fair and just judicial process.

During my tenure as the Special Agent in Charge, I was honored to have worked along with USA Lynch in arresting, prosecuting and convicting some of New York's most prolific drug traffickers, money launderers and gang members. In addition, USA Lynch worked along with my office to educate the community on the dangers of drug abuse, supporting "Prescription Drug Take Back Days" and other demand reduction efforts.

Over the years, USA Lynch has been a strong supporter of drug law enforcement while balancing the need for community outreach and demand reduction. USA Lynch truly embodies the characteristics, demeanor, even judicial temperament and command of the law that we all would expect from the Office of the United States Attorney General.

It is my honor to support the nomination of USA Lynch.

Sincerely,



John P. Gilbride

John P. Gilbride
130 Hillyer Circle
Middletown, NJ 07748

January 26, 2015

Senator Patrick J. Leahy
Ranking Member Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Support of United States Attorney Loretta Lynch for Attorney General

Dear Senator Leahy,

I am writing in enthusiastic support of United States Attorney (USA) Loretta Lynch for the position of United States Attorney General.

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It is my honor to support the nomination of USA Lynch.

Sincerely,



John P. Gilbride

The Leadership Conference
on Civil and Human Rights

1629 K Street, NW 202.466.3311 voice
10th Floor 202.466.3435 fax
Washington, DC www.civilrights.org
20006



January 26, 2015

The Honorable Charles Grassley, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

**SWIFTLY CONFIRM LORETTA LYNCH
AS ATTORNEY GENERAL**

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, we write to urge your support for the historic nomination of Loretta Lynch to be Attorney General of the United States. The Leadership Conference has been a leader on all federal civil rights legislation since the 1950s. As a strong, fair and independent prosecutor who has served two presidential administrations with distinction, we are confident Ms. Lynch would bring a steady hand to guide the Department of Justice (the Department or DOJ), an agency that is vitally important to the civil and human community because it serves as our nation's central agency to enforce federal laws. Importantly, she would make history as the first African-American woman to serve as Attorney General.

The Attorney General must safeguard the rule of law, protect the public, and ensure the fair and impartial administration of justice for all Americans. Ms. Lynch is highly qualified for the position. Her commitment to public service is unwavering, as is her dedication to our justice system. Ms. Lynch is a strong, independent prosecutor who has twice headed one of the most important U.S. Attorney's Offices in the country and who has decades of experience as a lawyer and leader. She knows the Department, has a distinguished record of success prosecuting major cases, and is an experienced manager.

Ms. Lynch has served in both the public and private sectors with distinction. She was a partner for eight years at a prestigious international law firm, and has twice served as U.S. Attorney for the Eastern District of New York (EDNY), the position she currently holds. Her commitment to public service is notable. In addition to leading the EDNY, Ms. Lynch is Chair of the Attorney General's Advisory Committee. She also sits on the Department of Justice's Diversity Council. In addition to her work at the Department, Ms. Lynch was

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-Lillian L. J. Pittman
National Partnership for
Women & Families
Vice Chairs
-Janet M. Pika
National Congress of American Indians
Thomas A. Saenz
Hispanic American Legal
Defense and Educational Fund
Hilary Shelton
NAACP
Treasurer
-Joe A. Stangor
American Federation of State,
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Barbara Aronson
-Loretta E. Connelley for
Civil Rights Under Law
Cornell Wilbert Brown
NAACP
-Dr. Estelita Garcia
National Education Association
Marcel D. Greenberger
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Chaz Griffin
Human Rights Campaign
-Linda D. Hallman
AFL-CIO
-Mary Kay Henry
Service Employees International Union
Sherrilyn Ifill
-Kwame Legal Defense and
Educational Fund, Inc.
-Dr. Ann Jenkins
AARP
Michael E. Keegan
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-Vera E. Koval
National Urban League
-Mae M. Moss
Asian Americans Advancing Justice |
AAJC
-Janet Murgolo
National Council of La Raza
Debra Nails
National Partnership for
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American Federation of Teachers
-Debra Williams
International Union, UAW
**Policy and Enforcement
Committee Chair**
-Michael Sherman
-Ann Taborson
President & CEO
-Vivian Rose Oskow
Executive Vice President & COO
-Karen McGrath



appointed Counsel to the Prosecutor for the United Nations International Criminal Tribunal for Rwanda in Tanzania, served as a board member of the Federal Reserve Bank of New York, and was a member of the New York State Commission on Public Integrity.

Ms. Lynch recognizes that a fair and equal justice system is essential to who we are as a nation and has fought tirelessly to protect the civil and human rights of all persons under the law. She has made clear time and again that the United States must ensure equal opportunity for all and protect its people from violence committed on account of a victim's race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. For example, Ms. Lynch and the EDNY have led the fight against human trafficking, breaking up sex trafficking rings, bringing to justice numerous sex traffickers, and reuniting families torn apart by the sex trade.

In 2012, the EDNY prosecuted racially and religiously motivated fire-bombings of a mosque, a business, and a Hindu temple in Queens. As Ms. Lynch stated when announcing the charges, "[h]ate crimes offend the very principles upon which this country was founded, and those who engage in such conduct will be prosecuted to the fullest extent of the law. This defendant allegedly sought to fan the flames of ethnic and religious tension. Those flames will always be extinguished by the rule of law." She also worked with DOJ's Civil Rights Division to secure an agreement with the Suffolk County Police Department (SCPD) in the wake of a spate of violent hate crimes against Latinos on Long Island and the failure of the SCPD to investigate such complaints. At the time, Ms. Lynch stated, "All residents of Suffolk County deserve full and unbiased police protection, regardless of national origin, race, or citizenship status. When people feel they cannot turn to the police for protection, they have lost one of our most basic rights – the right to feel safe in one's community."

Ms. Lynch prosecuted one of the most notorious cases of police brutality in New York City history, the case of Haitian immigrant Abner Louima. While Ms. Lynch has held accountable police who have broken the law and abused their powers, she has made clear that the vast majority of officers are dedicated public servants of the highest integrity who deserve our highest praise, and she is proud of her relationship with law enforcement.

In 2014, the EDNY, in conjunction with DOJ's Civil Rights Division, announced an agreement with New York City to settle a lawsuit alleging that the use of two written tests by the New York Fire Department (FDNY) violated civil rights laws by disproportionately screening out African-American and Hispanic applicants through criteria that did not identify the best qualified candidates. As the Court found, these tests bore little relationship to the job of a firefighter and excluded hundreds of qualified minority applicants from the opportunity to serve as firefighters. Under the agreement, the City not only compensated victims of discrimination, but created an entry-level hiring process that more accurately identifies the firefighter candidates best qualified for the job. As Ms. Lynch said at the time of the settlement, "We look forward to a new era in which African-American and Hispanic firefighters are full and equal participants in FDNY's proud tradition of protecting and serving the people of the city of New York."



Support for Ms. Lynch's nomination is bipartisan, broad, and far reaching. Former New York City Mayor Rudy Giuliani, New York Police Commissioner William Bratton, Former FBI Director Louis Freeh, and countless others support Ms. Lynch's nomination. In addition, the Senate unanimously confirmed her on two occasions to be the U.S. Attorney for the Eastern District of New York, a district that handles a wide variety of some of the most complex, diverse, and important cases in our country.

We strongly urge you to vote in favor of this important nomination. If you have any questions, please feel free to contact Nancy Zirkin at zirkin@civilrights.org or 202-466-3311 or Lisa Bornstein, Legal Director and Senior Legal Advisor at Bornstein@civilrights.org or 202-263-2856. Thank you for your consideration.

Sincerely,

Handwritten signature of Wade Henderson in black ink.

Wade Henderson
President & CEO

Handwritten signature of Nancy Zirkin in black ink.

Nancy Zirkin
Executive Vice President



**National
Urban League**

*Empowering Communities.
Changing Lives.*

**Statement of Marc H. Morial
President and CEO
National Urban League**

Before the

Senate Judiciary Committee

In Support of the Nomination of U.S. Attorney Loretta Lynch as U.S. Attorney General

January 28 -29, 2015

Chairman Grassley, Ranking Member Leahy, members of the Committee, the National Urban League applauds President Obama's nomination of U.S. Attorney Loretta Lynch to serve as America's next U.S. Attorney General and strongly urges that she be confirmed by the Senate without delay.

By naming his choice to succeed Attorney General Eric Holder shortly after Mr. Holder announced his decision to retire, the President affirmed his commitment to seamlessly uphold the civil rights protections and criminal justice reforms that have been so fiercely advocated by Mr. Holder. U.S. Attorney Loretta Lynch's confirmation would advance this nation's ongoing pursuit of becoming a more perfect union where she would become the nation's first African American woman to serve as U.S. Attorney General. She has distinguished herself as a tough, fair, independent lawyer dedicated to equal justice under the law.

Loretta Lynch has served more than 15 years as a prosecutor in the office that covers eight million people in Brooklyn, Queens, Staten Island and Long Island, New York. The Senate unanimously confirmed her to lead the U.S. Attorney's office on two separate occasions – once under President Clinton and more recently under President Obama. She has an outstanding record of successful prosecutions, including the terrorists who plotted to bomb the Federal Reserve Bank and the New York subway system, some of New York's most violent and notorious mobsters and gang members, and corrupt public officials from both parties. She has also won a number of Wall Street financial fraud cases. In 1999, she famously prosecuted one of the most egregious cases of police brutality in New York City history, the beating and sexual assault of Haitian immigrant, Abner Louima.

In nominating Loretta Lynch, President Obama said, "It is pretty hard to be more qualified for this job than Loretta. Throughout her 30-year career, she has distinguished herself as tough, as fair, an independent lawyer who has twice headed the most prominent offices in the country. She has spent years in the trenches as a prosecutor, aggressively fighting terrorism, financial fraud, cyber-crime, all while vigorously defending civil rights."

A native of Greensboro, North Carolina, the daughter of a Baptist minister and the granddaughter of a pastor/sharecropper, Loretta Lynch's dedication to protecting civil rights and ensuring equal justice is part of her DNA. Her background and experiences also inform her

commitment to common sense criminal justice reforms designed to make our system smarter and fairer. She remembers as a child riding on her father's shoulders to student anti-segregation boycott meetings at his church. She also recalls her sharecropper grandfather lamenting, "In rural North Carolina in the 1930s, if you were poor and Black and got in trouble with the law, you had very little recourse." Her personal history has taught her that justice is larger than any one case or conviction – that a fair and equal justice system is essential to who we are as a nation.

As a lawyer and U.S. attorney, Loretta Lynch's career has been undergirded by an unshakeable belief that, as she states, "Justice is only served when people feel protected by their government rather than targeted." In light of the many challenges we face today with respect to how our criminal justice system impacts the lives of African American men, women and our young people, we especially applaud Loretta Lynch's commitment to improving the criminal justice system and her recognition that there is still much more work that must be done.

Those are the values we look for most in the "People's Lawyer." The National Urban League therefore urges the Senate to confirm Loretta Lynch as the next United States Attorney General without delay and assure continuity in enforcing our federal laws, protecting our civil rights and keeping Americans safe.

Thank you for the opportunity to present our views.

About the National Urban League

The National Urban League (www.nul.org) is a historic civil rights and urban advocacy organization dedicated to economic empowerment in historically underserved urban communities. Founded in 1910 and headquartered in New York City, the National Urban League has improved the lives of tens of millions of people nationwide through direct service programs that are implemented locally by its 95 Urban League affiliates in 36 states and the District of Columbia. The organization also conducts public policy research and advocacy activities from its D.C.-based, Washington Bureau. The National Urban League, a BBB-accredited organization, has a 4-star rating from Charity Navigator, placing it in the top 10 percent of all U.S. charities for adhering to good governance, fiscal responsibility and other best practices.



January 26, 2015

VIA EMAIL

The Honorable Charles Grassley, Chair
Senate Judiciary Committee
135 Hart Senate Office Building
Washington, D.C. 20510
FAX (202) 224-6020

The Honorable Patrick J. Leahy, Ranking Member
Senate Judiciary Committee
437 Russell Senate Building
Washington, D.C. 20510
FAX (202) 224-3479

Re: *Nomination of Loretta E. Lynch to be Attorney General of the United States*

Dear Senators Grassley and Leahy:

On behalf of the National Women's Law Center (the "Center"), an organization that has worked since 1972 to advance and protect women's legal rights, we write in strong support of the nomination of Loretta E. Lynch to be Attorney General of the United States.

As the nation's chief law enforcement official, the Attorney General is responsible for enforcing federal laws, including laws of the utmost importance to women such as Title VII, Title IX, the Freedom of Access to Clinic Entrances Act (FACE), the Violence Against Women Act (VAWA), and the Fair Housing Act (FHA), as well as core constitutional protections. Consequently, the actions of the Attorney General have a serious impact on the legal rights and very futures of women across this country.

Ms. Lynch is exceptionally qualified for the position to which she has been nominated. She received undergraduate and law degrees from Harvard College and Harvard Law School. Her legal career demonstrates both breadth and depth of experience, comprising private practice, teaching, and government service. She worked as an associate at Cahill Gordon & Reindel, as a partner and Hogan & Hartson LLP (now Hogan Lovells), and taught as an adjunct professor of law at St. John's University School of Law. Ms. Lynch has twice served as the U.S. Attorney for the Eastern District of New York, the first African-American woman to serve in that position, and was most recently confirmed unanimously by the Senate in 2010.

In her current capacity as the U.S. Attorney for the Eastern District of New York, Ms. Lynch has had experience with a wide range of legal issues, including the prosecution of terrorism,

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11 Dupont Circle # Suite 800 # Washington, DC 20036 # 202.588.5180 # 202.588.5185 Fax # www.nwlc.org

organized crime, public corruption, financial fraud and cybercrime. In addition, she has prosecuted civil rights violations, including by the police officers who assaulted Haitian immigrant Abner Louima, and hate crimes. She has also made combatting human trafficking a priority for her office, in the last ten years indicting over 55 defendants in sex trafficking cases, and rescuing over 110 victims—including over 20 minors – of this violent trade. She has built a reputation as a fair and even-handed prosecutor with exceptional dedication to the rule of law.

Ms. Lynch has held leadership positions within the Department of Justice, including membership on a committee of U.S. Attorneys who advise the Attorney General on matters of policy since 2010 (serving as chair of that committee since 2013). She also serves on the Department of Justice's Diversity Council, a group dedicated to ensuring that the Department of Justice recruits and retains a workforce that reflects—and is thus responsive to—the vast diversity across America. In addition, Ms. Lynch has served as a member of the Board of the Federal Reserve Bank of New York, and of several non-profit organizations, including the Legal Aid Society of New York, the Federal Defenders Service of New York, and the National Institute for Trial Advocacy (NITA). She also served as Special Counsel to the Prosecutor of the International Criminal Tribunal for Rwanda in Tanzania, and as a member of the New York State Commission on Public Integrity. These experiences further demonstrate her commitment to public service and will serve Ms. Lynch in good stead, if confirmed as the nation's chief law enforcement officer.

Although Ms. Lynch's extraordinary qualifications speak for themselves, a wide array of bipartisan current and former government officials, private sector representatives, and organizations support her nomination, including her former law partners, the general counsels of Estee Lauder and Alcoa, the Federal Bar Counsel Presidents, the National Organization of Black Law Enforcement, the National District Attorneys Association, and former FBI Director Louis Freeh. We note that if confirmed, Loretta Lynch would be the first African American woman to serve as the Attorney General, an important milestone in the Department's history.

Ms. Lynch's legal expertise, breadth and depth of experience, and commitment to equal justice and the rule of law make her exceptionally qualified to serve as Attorney General. Consequently, the Center offers its strong support of Loretta E. Lynch to be Attorney General of the United States, and urges you to expeditiously approve her nomination so that she may begin the important work that awaits her. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

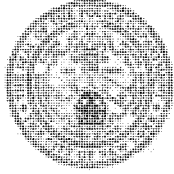
Sincerely,



Marcia Greenberger
Co-President



Nancy Duff Campbell
Co-President



THE POLICE COMMISSIONER
CITY OF NEW YORK

January 26, 2015

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, DC 20510-4502

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510-4502

Re: Loretta Lynch, Nominee for Attorney General of the United States,
United States Department of Justice

Dear Chairman Grassley and Ranking Member Leahy:

I respectfully submit this letter in support of the nomination of Loretta Lynch to be the next Attorney General for the U.S. Department of Justice. I have known Loretta personally and professionally and have been consistently impressed by her unflinching integrity, exceptional ability, and commitment to public service. She will serve the nation well in her role as Attorney General, and I fully support her confirmation.

Over the past 13 months, I have had the pleasure to work closely with her in my role as Police Commissioner of the New York City Police Department. During that time I have observed firsthand what an outstanding federal prosecutor Loretta is, and I have the highest degree of confidence that she will make an excellent Attorney General at a time when the nation so greatly needs her service. These are challenging times for the American criminal-justice system, as it must work together with the communities it serves to bridge divides wherever they may exist. The country deserves a leader of Loretta's caliber who will guide us through this collaborative process, and pave the way toward a safer, fairer nation.

As US Attorney in the Eastern District of New York, Loretta has proven her comprehensive knowledge of the central issues facing law enforcement today. She has also shown an evenhanded understanding of the fluid dynamics involved in policing our diverse community. Through her carefully considered and non-partisan, non-political decision-making, she has been a forceful, effective, and responsible advocate for the people of our region. Her work has made this city safer, and we all owe her a debt of gratitude.

Now the entire nation has the opportunity to gain from her tireless work ethic, sound judgment, excellent investigative and trial skills, and her irreproachable integrity and ethical behavior. As Attorney General she will employ these strengths to serve the American people.

I want to thank you and the entire Committee for the opportunity to express my views on this matter. Loretta is an excellent choice to lead the Department of Justice as the top law enforcement professional in the nation. Please contact me at any point if you have any questions or require any further information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William J. Bratton', with a stylized flourish at the end.

William J. Bratton
Police Commissioner



January 26, 2015

The Honorable Chuck Grassley, Chairman
The Honorable Patrick Leahy, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6050

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the hundreds of thousands of members of People For the American Way, we write to express our strong support for the nomination of Loretta Lynch as Attorney General of the United States. Lynch is highly qualified to run the Justice Department and become the nation's top law enforcement official.

The Department of Justice plays a powerful role in ensuring that America lives up to its responsibilities of liberty and justice for all. It plays a central role in enforcing the nation's civil rights laws, including those protecting the right to vote. It also ensures that our criminal laws are enforced in an effective and fair manner to keep us all safe, be it from violent criminals, terrorists, corporate malfeasors, or officials abusing their power and the public trust.

Lynch is no stranger to the Department of Justice. She worked as a federal prosecutor in the Eastern District of New York starting in 1990, serving in a number of leadership positions throughout the decade. In 1999, President Clinton elevated her to U.S. Attorney, a position she held until 2001. She was asked to return in 2010 when President Obama nominated her – and the Senate unanimously confirmed her – to serve again as the U.S. Attorney for the Eastern District of New York. She now manages an office of more than 160 Assistant U.S. Attorneys and 120 support staff to prevent, confront, and punish terrorism, community violence, human trafficking, financial fraud, public corruption, and other assaults on the rule of law.

While she has obvious expertise in the many issues that confront one of the most important districts in the nation, she also has a deep knowledge of the many issues confronting the Justice Department nationwide. She has been a member of the Attorney General's Advisory Committee for U.S. Attorneys since 2010, becoming its chair in 2013.

Support for civil rights is a prerequisite for anyone seeking to be Attorney General. Fortunately, Lynch, who would become the first African American woman to serve as Attorney General, has an unquestioned commitment to civil rights. The decisions she has made and the skill with which she has carried them out have protected ordinary people – citizens and noncitizens alike – whose rights have been violated.

Her commitment can be seen in her prosecution of hate crimes, which she recognizes as “offend[ing] the very principles upon which this country was founded.” It shows in her work with New York firefighters to eliminate racial discrimination in hiring, leading to an agreement where victims of discrimination received compensation and the fire department reformed its hiring process. Her commitment to the rights of ordinary people against the powerful can be seen in her prosecution of the rogue police officers who beat and sodomized Haitian immigrant Abner Louima, and in her prosecutions breaking up human trafficking rings that enslave victims and force them into prostitution.

In an era when Americans are more and more concerned about the unchecked power of corporate interests and their seeming immunity from the rules that govern the rest of us, Lynch and the Eastern District have been instrumental in obtaining record settlements against banks for misconduct related to residential mortgage-backed securities. For instance, Bank of America recently paid \$1 billion in the nation's largest False Claims Act settlement relating to mortgage fraud carried out by its Countrywide subsidiary.

But her commitment to people's rights goes even beyond her priorities and accomplishments at the Justice Department over the course of her public career. In 2005, while in private practice, she worked as Special Counsel to the Office of the Prosecutor at the International Criminal Tribunal for Rwanda, investigating allegations of witness tampering relating to the Rwandan genocide of the 1990s. She took on this critically important assignment on a pro bono basis.

The remarkable breadth of support her nomination commands from those across the ideological spectrum who know her best is a powerful indication of Lynch's abilities, her leadership, her independence, and her commitment to justice.

The Congressional Black Caucus urges her confirmation, citing her "distinguished record as United States Attorney" and her "high intellect and character."

Twenty-five former U.S. Attorneys who served under Democrats and Republicans alike write that they "believe that serving as U.S. Attorney provides a strong background to be Attorney General. Both because of that and because of her own strong personal qualifications, we believe that Ms. Lynch has the experience, temperament, independence, integrity, and judgment to immediately assume this critically important position."

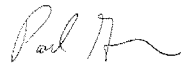
The National District Attorneys Association writes that "[a]s prosecutors facing challenges in the field from violent crime, to human trafficking, to gangs and drug traffickers, our membership feels that Ms. Lynch understands the operational nature of these challenges and will be a strong independent voice at the helm of the Department."

President Obama has made a nomination that Senate Democrats and Republicans alike can support. Loretta Lynch would make an excellent Attorney General. She should have a fair hearing, devoted to her unquestioned qualifications, and a timely confirmation.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program



Paul Gordon
Senior Legislative Counsel

cc: Members of the Senate Judiciary Committee



January 27, 2015

The Honorable Chuck Grassley, Chairman
 The Honorable Patrick Leahy, Ranking Member
 United States Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510-6050

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of our more than 100 member organizations representing a broad array of groups committed to the creation of an equitable, just, and free society, Alliance for Justice strongly supports Loretta Lynch in her nomination to be the next Attorney General of the United States.

Ms. Lynch, who would be the first African American woman to hold this job, exemplifies the strong and independent voice both Republicans and Democrats have called for in an Attorney General. Her career has been built on prosecuting crime that violates public trust: from corrupt politicians in both parties, to law enforcement officers who abuse their authority, to white collar criminals who break the law in search of profit. Ms. Lynch has always put public service above partisan politics.

Ms. Lynch's credentials are outstanding. In her 30 year career, she has twice served as United States Attorney for the Eastern District of New York. Additionally, she has worked as a partner at Hogan & Hartson, L.L.P., an adjunct professor at St. John's University School of Law, as the Eastern District's Chief of the Long Island Office, and as an assistant U.S. attorney. In all of these roles, she has been tough, fair, and effective.

Further, Ms. Lynch has the background needed to continue Attorney General Eric Holder's strong legacy of standing up for civil rights and ensuring equal justice for all Americans. Ms. Lynch has been a leader in fostering diversity both in the legal world and in law enforcement. She understands the importance of justice, and when laws and enforcement must change to achieve it.

Because she understands the need for building strong communities and improving trust between law enforcement and diverse neighborhoods, Ms. Lynch has earned the respect of both law enforcement and those seeking to curb police abuses. Her supporters include numerous law enforcement officials and prosecutors. At the same time, Ms. Lynch has held law enforcement officers accountable when they abuse their power. She prosecuted four New York City police officers and one police sergeant for human rights violations after a Haitian immigrant was beaten

and sodomized with a broken broomstick. In another case, Ms. Lynch oversaw the prosecution of an officer who beat a victim and used a racial epithet in falsely arresting an African American man. She understands that the public faith in law enforcement depends on the vigilant prosecution of those who betray that trust.

We urge the swift confirmation of Loretta Lynch to be our nation's next Attorney General.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nan Aron', with a long horizontal flourish extending to the right.

Nan Aron
President

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New York, NY 10006-1738
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F 202.482.1312

January 27, 2015

Senator Charles Grassley
Chairman, Senate Judiciary Committee
135 Hart Senate Office Building
Washington, D.C. 20510

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
437 Russell Senate Office Building
Washington, D.C. 20510

RE: Nomination of Loretta Lynch for United States Attorney General

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the NAACP Legal Defense & Educational Fund, Inc. ("LDF"), I write to strongly support the nomination of Loretta Lynch to serve as the 83rd Attorney General of the United States.

First, we must note the historic significance of Ms. Lynch's appointment. If confirmed, Loretta Lynch would be our nation's first African-American female—and only the second African American ever—to serve as Attorney General. In a country where African Americans were relegated by law to second-class status only a generation ago, this is a remarkable accomplishment to celebrate.

Loretta Lynch is an extraordinary candidate to lead the Justice Department at this moment in time. Growing up in North Carolina amidst the civil rights struggles of the 1960s has provided her with a unique perspective of the challenges facing our country in fulfilling our democratic ideals and of the vital role our federal government plays in ensuring equal justice for all. Indeed, no other prior nominee for Attorney General was told by her mother at an early age that she "picked cotton so [her daughter] wouldn't have to do the same thing." Ms. Lynch has impeccable academic and professional credentials and would bring strong leadership and management skills to the position. Importantly, she has devoted most of her illustrious legal career to enforcing federal laws on behalf of the United States and has amassed a widely praised record of even-handed enforcement under both civil and criminal statutes. She is intimately familiar with all facets of the Department which she would now lead.

The Justice Department serves as our nation's guardian of the rule of law and chief proponent of equal opportunity for all. Currently, the Department faces significant challenges across a wide range of issues, including civil rights. As we celebrate the 50th Anniversary of the

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.



Voting Rights Act, the Department's longstanding enforcement of federal civil rights laws has come to the fore once more, from its momentous role in Selma to its critical enforcement activities today. The leader of the Department at this important time must be committed to defending the rights of all Americans, maintaining the progress we have achieved in civil rights, and acting independently of partisan or political pressure.

For nearly six decades, LDF has worked alongside the Justice Department and the Civil Rights Division, its "crown jewel," to ensure that our nation lives up to its promise of equality for everyone. Indeed, the Civil Rights Division has often provided the best hope to racial and ethnic minorities in the quest for equal justice. The Division was formed soon after the Supreme Court's landmark decision in *Brown v. Board of Education*. Its courageous and aggressive enforcement of the new civil rights statutes passed in the 1950s and 1960s opened countless doors for African Americans and other racial minorities. While national civil rights organizations such as LDF bring a number of civil rights cases themselves, the Civil Rights Division is the principal enforcer of our nation's civil rights laws in light of its capacity, staff and resources.

Over the last six years, Attorney General Holder has led the Justice Department with remarkable vision and courage. In the field of civil rights, his dedication, strategic focus, and commitment have been outstanding and unrivaled. From the beginning, General Holder had a vision of restoring and transforming the Civil Rights Division across a variety of pressing legal areas, including criminal justice reform, voting rights, predatory lending, and legal services for the impoverished. In particular, the Attorney General has been forceful and courageous in his willingness to speak candidly about the problem of mass incarceration. He launched a groundbreaking new "Smart on Crime" initiative to curb the harsh and often discriminatory effects of federal sentencing practices, expand the availability of alternatives to incarceration, address the root causes of recidivism, and expand the availability of re-entry services. In recent months, after tragic incidents rocked Ferguson, Missouri and Staten Island, New York, General Holder was personally and powerfully involved in the federal response to the unacceptable use of excessive force by police against the communities they serve. Finally, General Holder's leadership and tenacity in the realm of voting rights has been unmatched. In 2013, when the Supreme Court invalidated central parts of the Voting Rights Act in a damaging decision, Attorney General Holder promptly deployed the full litigation strength of the Department to places like North Carolina and Texas to protect voters of color who had been made even more susceptible to voting discrimination. His Justice Department attorneys stood alongside LDF lawyers to challenge Texas' discriminatory photo ID law and ultimately prevailed—with a federal judge finding that the state had intentionally discriminated and violated the United States Constitution.

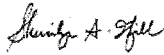
Attorney General Holder leaves a remarkable legacy that would be difficult for anyone to follow. But if any candidate is able to do so, it would be Loretta Lynch. Ms. Lynch has all the requisite qualities and talents to excel tremendously at the job. After graduating from Harvard University and Harvard Law School, Ms. Lynch worked her way up through the ranks of the United States Attorney's Office. She started her career in the Eastern District of New York, prosecuting violent crime and narcotics cases, and was promoted to Deputy Chief of General Crimes and Chief of Intake and Arraignments, and later to Chief of the

Long Island Office. Subsequently, she was nominated and confirmed to serve as the United States Attorney for the Eastern District of New York under two administrations. She successfully brought major cases in the areas of human trafficking, child abuse and exploitation, counterterrorism, cybercrime, mortgage and financial fraud, corporate misconduct, and public corruption. Ms. Lynch also served as a member of the board of the Federal Reserve Bank of New York and as a partner at a major national law firm.

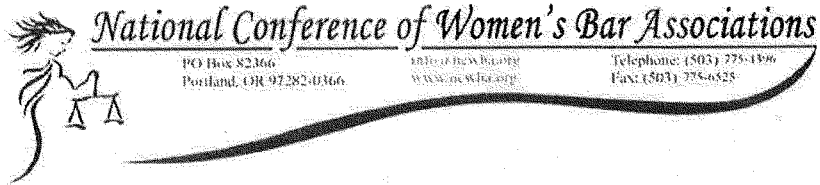
Ms. Lynch is known for her perseverance and adherence to the rule of law. She has earned the respect of a bipartisan array of lawyers, law enforcement organizations, and civil rights groups. As the United States Attorney, she prosecuted brutal hate crimes, including the firebombing of mosques and Hindu temples, and reached a comprehensive settlement with a Long Island police department to improve their handling of violent hate crimes against Latinos. Ms. Lynch also served pro bono as Special Counsel to the Office of the Prosecutor at the International Criminal Tribunal for Rwanda, where she investigated human rights violations. Additionally, she has been recognized for the successful prosecution of police brutality and misconduct, including the infamous case of police abuse against Abner Louima in 2000.

While it is hard to overstate the positive impact of General Holder's tenure, we are confident that, if confirmed, Ms. Lynch will advance his proud legacy. Doing so will require that she continue the work of reforming federal criminal sentencing to reflect a concern with rehabilitation, re-entry, and the reduction of American's over-reliance on incarceration. It also means working to reform policing through incentives of financial support and litigation, which improve police-community relations and eradicate the taint of bias in policing. Finally, Ms. Lynch should deploy the Justice Department's resources to ensure that every American's right to vote is fully protected. At this momentous time for the Department of Justice and for the quest for racial justice in our society, it is imperative that the Department is led by someone with a steadfast commitment to equal justice under the law. We believe Loretta Lynch is uniquely suited to assume this critical role. We look forward to continuing to work alongside the Department under Ms. Lynch's leadership in the years to come.

Respectfully submitted,



Sherrilyn Ifill, President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.



January 28, 2015

The Honorable Charles E. Grassley
 Chairman, Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

The Honorable Patrick J. Leahy
 Ranking Member, Committee on the Judiciary
 United States Senate
 437 Russell Senate Bldg.
 Washington, D.C. 20510

Re: Confirmation Hearings of Loretta Lynch, Esq.

Dear Chairman Grassley and Ranking Member Leahy:

The National Conference of Women's Bar Associations is pleased and honored to submit this letter of support in connection with the nomination of Loretta Lynch, current United States Attorney for the Eastern District of New York, as the next Attorney General of the United States.

The National Conference of Women's Bar Associations (NCWBA) is a unique organization of women's bar associations, representing approximately 35,000 women lawyers across the nation. As "an association of associations," the NCWBA advocates for the equality of women in the legal profession and in society by mobilizing and uniting women's bar associations to effect change. Such change includes visibly increasing the number and role of women lawyers in federal and state judiciaries, academia, law firms, corporate and nonprofit executive offices, and government and political leadership.

The NCWBA strongly supports the nomination, and urges the swift confirmation, of Loretta Lynch as United States Attorney General. Ms. Lynch's record of accomplishment speaks for itself. Ms. Lynch's impeccable credentials, combined with knowledge and real world experience gained over the course of three decades of practice, together uniquely position Ms. Lynch to lead the U.S. Department of Justice. She is an extraordinarily accomplished lawyer who both understands the complex legal issues before her and the need for strategic development of approaches for addressing such issues. Her experience, including at senior leadership levels, in both the public and private sectors gives her a perspective that is both broad and deep. Her ability to build relationships across stakeholder groups, while at the same time

January 28, 2015
Page 2

remaining independent, forthright and transparent in her approach, reflects her mastery of both underlying substance and the process needed to uphold and promote justice.

As United States Attorney for the Eastern District of New York, Ms. Lynch has prosecuted cases across myriad substantive areas, ranging from high-profile public corruption and commercial fraud matters, to matters involving violent crime and gang prosecutions, from human trafficking matters to terrorism-related cases and other matters going to threats to the national security. She has pursued these matters on an impartial, non-partisan and non-political basis, steadfastly upholding the principles upon which the Justice Department is based.

In short, Loretta Lynch is uniquely qualified to serve as Attorney General and to lead the U.S. Department of Justice. Her background, experience and proven leadership present precisely the combination of skills and attributes the country needs in its top legal officer, Ms. Lynch's own personal and professional journeys reflect the kind of American journey possible only under a system of justice that reflects all Americans and that truly operates as a system for all. The NCWBA is proud to support her nomination.

Respectfully submitted,



Lauren Tucker McCubbin
President, National Conference of Women's Bar Associations



Monica G. Parham
Judicial Endorsements/Nominations Committee, National
Conference of Women's Bar Associations

JOHN LEWIS
5th District, Georgia

SENIOR CHIEF DEPUTY
DEMOCRATIC WHIP

COMMITTEE ON
WAYS AND MEANS

RANKING MEMBER,
OVERSIGHT SUBCOMMITTEE

HUMAN RESOURCES



Congress of the United States
House of Representatives
Washington, DC 20515-1005

WASHINGTON OFFICE:
315 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1005
(202) 225-3801
FAX: (202) 225-4051

DISTRICT OFFICE:
THE EQUITABLE BUILDING
150 PEACHTREE STREET, N.W.
SUITE # 1909
ATLANTA, GA 30303
(404) 529-0116
FAX: (404) 331-0947

January 27, 2015

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

I write to respectfully encourage your support for the historic nomination of Ms. Loretta Lynch for Attorney General of the United States.

With over 30 years of legal experience, Ms. Lynch is unwavering in her efforts to create a more just society. A Harvard graduate with an extensive career in public service, private practice, and academia, she recognizes the value of all people and has fought vigorously to ensure their equal protection under the law.

She will carry the torch of justice to help make the United States a more perfect union. Ms. Lynch's commitment to civil rights stems from her family's roots in North Carolina. Her father, a Baptist minister, preached at a church where students would meet to organize anti-segregation boycotts. Her grandfather, a sharecropper and pastor in the 1930s, helped people in his community who faced challenges under the Jim Crow system.

Among Ms. Lynch's notable achievements in the Office of the U.S. Attorney in the Eastern District of New York was the successful prosecution of five police officers for the torture of Haitian immigrant Abner Louima. Her additional experience assisting the International Criminal Tribunal in Rwanda provides a unique vantage point, perspective, and depth regarding the inviolability of the law and the legal profession.

It is with great honor and hope for the future of this country that I ask you to give fair and timely consideration and vote in favor of her nomination. I appreciate your consideration of my views on this important matter.

Sincerely,

John Lewis
Member of Congress



January 27, 2015

The Honorable Charles Grassley
Chairman
Senate Committee on Judiciary
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member
Senate Committee on Judiciary
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

The YWCA, the oldest and largest multicultural organization dedicated to the elimination of racism and empowerment of women, expresses support for the nomination of Loretta Lynch to the position of Attorney General of the United States.

Ms. Lynch is an exemplary candidate for consideration given her distinguished 30-year career in legal justice. She has worked in the public and private sectors as a United States Attorney, partner, prosecutor, general counsel and adjunct professor. Irrespective of titles, Ms. Lynch's sole objective has been to seek justice and uphold the law.

As the first woman of color to be appointed Attorney General, Ms. Lynch is uniquely qualified to head the Department of Justice. In recent months, the practice of racial profiling has tragically illustrated it is a serious problem in the United States. The aftermath of Ferguson, Missouri and Staten Island, New York demonstrate that the nation needs a leader who has experience in improving police relations in neighborhoods where mistrust and tensions are high. We believe that Ms. Lynch will help restore faith in our justice system by bringing together concerned members of local communities, law enforcement agencies, churches and civil rights organizations. The federal government's involvement is vital to repairing the trust between local communities and law enforcement. We are confident that Loretta Lynch as Attorney General would ensure that law enforcement agencies are held accountable to high standards, receive adequate training, and document racial profiling incidents.

While we are pleased that outgoing Attorney General Eric Holder has updated the Department of Justice's 2003 racial profiling guidance for federal law enforcement agencies, there is still more work to be done. The updated Guidance moves us closer to correcting patterns of systemic racial bias in policing and its negative and often lethal impact on various communities of color. However, in order for there to be lasting widespread reform and justice, it is imperative that the Guidance is further refined. We look forward to working with Ms. Lynch on the removal of exemptions for law enforcement activities related to screening airline passengers, patrolling our borders and ensuring that the Guidance is adopted by state and local law enforcement agencies.

The YWCA's commitment to eliminating racism and empowering women spans over 150 years and is one of the common threads that unites more than two million women and families served annually in over 1,200 locations across the country. In 2012, nearly 300,000 individuals participated in racial justice programs that addressed systemic barriers within the criminal justice system, housing, health care, and education industry. YWCAs offered trainings, hosted dialogues and developed private-public collaborations. In addition, we are the largest network of domestic violence shelter services around the country serving almost one million women and children annually. The YWCA is dedicated to promoting peace, justice, freedom and dignity for all.

for every woman

2025 M Street, NW
Suite 550
Washington, D.C. 20036

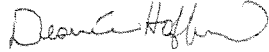
202-467-0801

www.ywca.org

939

We feel that Ms. Lynch is exceptionally qualified to lead our nation's top law enforcement agency as Attorney General. We are confident that her leadership will benefit all Americans. We urge the Senate to swiftly confirm Ms. Lynch and with broad bipartisan support. If you have any questions, please do not hesitate to contact me at (202) 835-2354 or dhoffman@ywca.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "Desirée Hoffman".

Desirée Hoffman
Director of Advocacy and Policy
YWCA USA

January 28, 2015

The Honorable Charles E. Grassley
Chairman
U.S. Senate Committee on the Judiciary
224 Senate Dirksen
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member
U.S. Senate Committee on the Judiciary
151 Senate Dirksen
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

We write as members of an ad hoc group of current and former African American AmLaw partners and Fortune 500 general counsel to urge you to vote in favor of Loretta Lynch's nomination to become the Attorney General of the United States.

We begin our analysis of U.S. Attorney Lynch's professional pedigree with a brief recitation of her educational background and dedication to public service. Ms. Lynch graduated from Harvard College with an A.B. *cum laude* in English and American Literature (1981). Thereafter, she obtained her J.D. from Harvard Law School. She spent eleven years (03/1990 – 05/2001) serving as an Assistant United States Attorney (AUSA) in the Eastern District of New York (EDNY) and another 6 years across two stints as the EDNY United States Attorney. As illustrated by the sheer number of agencies and departments that have honored her (e.g. U.S. Secret Service, U.S. Customs Service, U.S. Drug Enforcement Administration, U.S. Postal Service, U.S. Bureau of Alcohol, Tobacco and Firearms, U.S. Internal Revenue Service, U.S. Securities and Exchange Commission, New York Police Department of Internal Affairs Division, and New York State Inspector General, etc.), Ms. Lynch's public service proves exemplary. Moreover, Ms. Lynch maintains a strong relationship with law enforcement officials, including the New York City Police Department, despite having successfully prosecuted one of the most notorious incidents of police brutality of her generation. *See United States v. Volpe, et al.*, 98 CR 196 (EHN).

Beyond her service as the EDNY U.S. Attorney, Ms. Lynch has significant leadership experience within the Department of Justice. She served as both the Vice-Chair and Chair of the Attorney General's Advisory Committee where she worked closely with General Holder and the Deputy Attorney General to develop Department policy after consultation with her U.S. Attorney colleagues. In that capacity she was one of the few deans of the U.S. Attorney community, mentoring many of her colleagues, given her excellent temperament and prior experience during the Clinton administration. She is, in essence, a lawyer's lawyer.

Ms. Lynch's experience also extends to the private sector. While at Hogan & Hartson (2002 – 2010), she primarily counseled clients in white collar criminal defense. That work included counseling clients on the increasingly important Foreign Corrupt Practices Act. However, she also found time during this period (07/2005 – 07/2007) to serve as counsel to the prosecutor at the United Nations International Criminal Tribunal for Rwanda—a pro bono service by appointment. In addition, she had considerable civil litigation experience taking and defending depositions and engaging in motions practice while at Cahill Gordon & Reindel (09/1984 – 02/1990). This private sector experience in both the criminal and civil practice of law has served her well in her two stints as the EDNY U.S. Attorney. It also underscores her capacity to supervise the criminal, civil, and other components of the vast Department of Justice.

In light of her significant public and private sector experience and exceptional educational pedigree, we are confident that Ms. Lynch will be an able and independent Attorney General. For all of the foregoing reasons, we urge you and the other Committee members to advance Ms. Lynch's nomination to the full Senate so that she may be promptly confirmed.

Sincerely,

Benjamin F. Wilson
Managing Principal^b
Beveridge & Diamond, P.C.

Frederick R. Nance
Partner
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Partner
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Christopher P. Reynolds
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Frank P. Scruggs Partner Berger Singerman LLP	Paul W. Sweeney L.A. Administrative Partner K&L Gates
Paul Lancaster Adams Partner Ogletree, Deakins, Nash, Smoak & Stewart	Sherrie L. Farrell Member Dykema
Richard H. Deane, Jr. Atlanta Partner-in-Charge Jones Day	Bernard Gugar SVP & General Counsel Harpo, Inc.
Damario Solomon-Simmons Managing Partner SolomonSimmonsSharrock & Associates	Steven Wright Boston Executive Partner Holland & Knight

¹ Please note that all titles and organizational affiliations are listed for identification purposes only.

² Chairman and CEO of Dennis W. Archer PLLC, former President, National Bar Association (1983-1984) and American Bar Association (2003-2004).



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PROSECUTING ATTORNEYS

January 27, 2015

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The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

The Association of Prosecuting Attorneys (APA), a national organization made up of elected and appointed prosecuting attorneys from throughout the nation, supports the confirmation of U.S. Attorney Loretta Lynch as Attorney General of the United States.

APA provides prosecutors across the country with valuable resources such as training and technical assistance in an effort to develop proactive and innovative prosecutorial practices that prevent crime, ensure equal justice, and help make our communities safer.

Ms. Lynch is a career prosecutor with a proven record of success at the state, local and national levels. Through her extensive experience prosecuting violent crime, drug trafficking, organized crime, corruption, and terrorism, Lynch understands the vital role that prosecutors serve in keeping our communities safe, and with this experience she will serve our nation honorably as Attorney General.

In addition to her experience in the courtroom, Loretta Lynch has displayed the leadership capabilities and character to operate the U.S. Department of Justice in an efficient manner that ensures equal justice for all Americans. APA is proud to support Ms. Lynch's nomination and we hope for a swift and impartial nomination hearing.

Sincerely,

David LaBahn
President

RECEIVED JAN 28 2015

UNITEDHEALTH GROUP

Peter H. Walsh
Senior Deputy General Counsel
Chief of Litigation
1900 North Royal Lane
Minnetonka, MN 55345
Tel: 952.892.8200
pwalsh@uhc.com

January 23, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, D.C. 20510

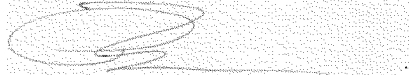
Dear Chairman Grassley and Ranking Member Leahy:

I am Senior Deputy General Counsel and Chief of Litigation at UnitedHealth Group Incorporated ("UnitedHealth"). I write in reference to the nomination of Loretta Lynch to be Attorney General of the United States. I worked closely with Ms. Lynch in 2008-2009 when, as a partner at Hogan & Hartson, LLP, she represented UnitedHealth in a large and complex piece of antitrust litigation.

UnitedHealth prevailed in that matter, both in the Federal District Court and the Seventh Circuit Court of Appeals, in large part due to Ms. Lynch's leadership and effective advocacy, and I cannot speak more highly about her skills as an attorney. From the outset of the case, Ms. Lynch emerged as a decisive leader, displaying impeccable judgment and instincts. She is a quick study, and demonstrated not only a strong command of the law but a practical understanding of complex organizations and business transactions. Ms. Lynch is personable and thoughtful, and developed a valuable rapport with her clients and adversaries alike. I particularly recall her calm and steadying influence during stressful and challenging times. Had Ms. Lynch remained in private practice, I would not have hesitated to retain her in future matters.

In sum, I believe Ms. Lynch has outstanding legal skills, judgment and character.

Yours truly,



Peter H. Walsh

01/28/2015 14:23

(FAX)

P.002/003

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Jessica Adler
The Law Office of Jessica E. Adler
Immediate Past President
Ex-Officio

January 28, 2015

The Honorable Check Grassley
United States Senate
Chairman, Committee on the Judiciary

The Honorable Patrick Leahy
United States Senate
Ranking Member, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Support of Loretta Lynch for U.S. Attorney General

Dear Senator Grassley and Senator Leahy:

As Board members of the Women's Bar Association of the District of Columbia ("WBA"), we write on behalf of our membership to support the nomination of The Honorable Loretta E. Lynch to be Attorney General of the United States. The WBA is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Our mission is to maintain the honor and integrity of the profession; promote the administration of justice; advance and protect the interests of women lawyers; promote their mutual improvement; and encourage a spirit of friendship among our members.

We are confident, given the impressive trajectory of Ms. Lynch's 30-year career, her work as Attorney General will serve to advance the WBA's mission as well as the best law enforcement interests of our nation. Ms. Lynch has excelled in both private practice and government service. As a prosecutor, she has fought terrorism, human trafficking, gang crimes, drug crimes, political corruption, and cybercrime. She has not shied from controversy, often taking on high-profile cases and ground-breaking cases.

She has earned respect from leaders on both sides of the political aisle as well as from a diverse collection of leaders in her community, including both civil rights leaders and the New York Police Commissioner.

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
Washington, DC 20006
Phone: 202-639-8880 Fax: 202-639-8889
Email: admin@wbadc.org Web: www.wbadc.org

01/28/2015 2:19PM (GMT-05:00)

01/28/2015 14:23

(FAX)

P.003/003

Support of Loretta Lynch for U.S. Attorney General
January 28, 2015

Furthermore, she has proven herself worthy of confirmation on two previous occasions, and she has only become more accomplished and deserving since that time.

Moreover, Ms. Lynch's nomination would be historical as she would be the first African American woman to serve as Attorney General. In a country where women make up fewer than 20 percent of the Members of Congress and approximately the same low percentage of the partner offices in private practice, this is of enormous significance. Women and young girls need more role models like Loretta Lynch.

For all these reasons, we encourage you to confirm Loretta E. Lynch to be the next Attorney General of the United States.

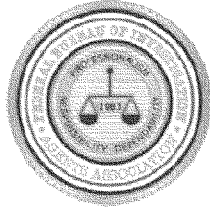
On Behalf of the Board of Directors,



Suzanne Reifman
President

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
Washington, DC 20006
Phone: 202-639-8880 Fax: 202-639-8889
Email: admin@wbdc.org Web: www.wbdc.org

01/28/2015 2:19PM (GMT-05:00)



January 27, 2015

The Honorable Chuck Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Loretta Lynch

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the FBI Agents Association ("FBIAA"), a voluntary professional association representing over 12,000 active duty and retired FBI Special Agents, I write to express the FBIAA's support for the confirmation of Loretta Lynch to serve as the next Attorney General of the United States.

While serving as the United States Attorney for the Eastern District of New York, Ms. Lynch has worked closely with FBI Special Agents to prosecute important cases involving terrorism, violent crime, and corruption. The FBIAA believes that Ms. Lynch's reputation and record as a prosecutor speaks to her ability to be an effective Attorney General. We believe she will be a strong leader and ally to the Bureau and all federal law enforcement agencies fighting against the criminal and terrorist threats facing our country.

The FBIAA hopes to meet with Ms. Lynch soon, and greatly appreciates your consideration of the opinions of Special Agents regarding Ms. Lynch's nomination.

Sincerely,

A handwritten signature in cursive script, appearing to read "Reynaldo Tariche".

Reynaldo Tariche
President

Post Office Box 12650, Arlington, Virginia 22219
A Non-Governmental Association
(703) 247-2173 Fax (703) 247-2175

WILMERHALE

January 26, 2015

The Honorable Charles Grassley
 Chairman, Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

Jamie S. Gorelick

+1 202 663 6500 (f)
 +1 202 663 5363 (f)
 jamie.gorelick@wilmerhale.com

The Honorable Patrick J. Leahy
 Ranking Member, Committee on the Judiciary
 United States Senate
 437 Russell Senate Building
 Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

I am writing to urge the confirmation of Loretta Lynch as Attorney General of the United States. As a former Deputy Attorney General, I know how important it is to justice in this country that the Department be led by someone of impeccable values and extraordinary capabilities. I have known Loretta Lynch since her service in the Eastern District of New York during the Clinton Administration. Even as a young lawyer, Loretta Lynch had a superb reputation for the care with which she handled cases within a busy office. She moved regularly to positions of ever-greater responsibility, ultimately serving as United States Attorney. In that position, she was known for her hands-on leadership style, her careful consideration of the merits of cases and her openness to hearing all points of view.

That she was willing to return to that same position after nearly a decade is further evidence of her commitment to public service. Ms. Lynch has been recognized by her peers as a leader within the United States Attorney community. On the Attorney General's Advisory Committee, she has had to grapple with the most important issues facing the Department and to bring to closure disagreements among Departmental components. She is as well-prepared to serve as Attorney General as anyone who has ever been nominated for that position.

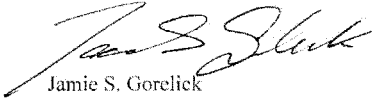
Loretta Lynch clearly embodies the highest and best values of the legal profession. She is honest, forthright and courageous, as can be seen in the many decisions she has made as United States Attorney. She is also a leader in the larger legal community, speaking out on issues of concern to both lawyers and community leaders.

WILMERHALE

The Honorable Charles Grassley
The Honorable Patrick J. Leahy
January 26, 2015
Page 2

I strongly urge her confirmation, in the best interest of the country.

Sincerely yours,



Jamie S. Gorelick

950

Larry D. Thompson
PepsiCo, Inc.
700 Anderson Hill Road
Purchase, New York 10577

January 27, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

Until November 24, 2014, when I retired, I was Executive Vice President, Government Affairs, General Counsel and Corporate Secretary of PepsiCo. Prior to that, I was a Senior Fellow at the Brookings Institution and Deputy Attorney General under President George W. Bush. Before that, I was a partner at King & Spalding and United States Attorney for the Northern District of Georgia.

I write in support of the nomination of Loretta E. Lynch to be the next Attorney General of the United States. I have followed Ms. Lynch's career and am familiar with her record, and I think she will make an excellent Attorney General.

Based on her record, I think that Ms. Lynch will take a balanced and pragmatic approach to enforcing the law. She is a person of moderation who is not interested in using the law to pursue a personal agenda. She is also tough but fair, which is all one can ask for and expect from the chief legal officer of the United States.

In addition, Ms. Lynch appears to be a person of great integrity who will enforce the law in a non-partisan way. Her record suggests that she is an independent thinker who will do what she thinks is right. While it will be her job to defend the executive branch, I am confident that she will not hesitate to tell her colleagues when she disagrees with them.

Finally, as a result of her background and experience, I believe that Loretta Lynch will be an excellent role model. She exemplifies what it means to be a serious professional, without taking herself too seriously. I have confidence in her abilities and know that she will carry out the duties of her office with distinction and honor.

The Honorable Charles E. Grassley
The Honorable Patrick J. Leahy

- 2 -

January 27, 2015

For these reasons, I ask the Judiciary Committee to act favorably on the nomination and to recommend Loretta Lynch to the full Senate as the next Attorney General of the United States.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Thompson', with a long horizontal flourish extending to the right.

Larry D. Thompson



NATIONAL BAR ASSOCIATION

January 29, 2015

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Pamela J. Meanes
St. Louis, MO

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The Honorable Charles Grassley

Chairman

U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy

Ranking Member

U.S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the more than 65,000 members who comprise the National Bar Association, the nation's oldest and largest association of predominantly African-American lawyers, judges, educators, and law students, I write to express our unequivocal support of the nomination of U.S. Attorney Loretta Lynch for the position of Attorney General of the United States.

Ms. Lynch's nomination is both timely and historic, in light of it coming during the year that this Nation celebrated the 50th Anniversary of the Civil Rights Act of 1964. If confirmed, Ms. Lynch would make history as the first African-American woman to serve as the United States Attorney General. However, these poetic reasons are not the cause for the National Bar Association's endorsement. Rather, it is her record of excellence and unwavering commitment to impartiality and the truth that bolster our support of her nomination.

Ms. Lynch is a passionate and highly skilled litigation attorney. Throughout her career, she has advocated for justice in the legal system and has earned the respect of her colleagues in the legal community, bipartisan political leaders, judges, elected officials, community leaders, and the community at-large. This overwhelming support is well founded as it is based upon her tenacity, expertise, and integrity as well as her educational, professional, and personal qualifications.

Her educational pedigree is beyond reproach as she earned a Bachelor's Degree from Harvard College and a Juris Doctor from Harvard Law School. More importantly, her legal background is well balanced as she has extensive experience in private practice as well as in the public sector, having spent 11 years as an Assistant U.S. Attorney (AUSA). Her latter experience includes two years as the Chief of the Long Island Office before being appointed the U.S. Attorney of the Eastern District of New York by President Bill Clinton. In 2010, Ms. Lynch was re-appointed to the position of the U.S. Attorney of the Eastern District by President Barack Obama. She has served as a professional prosecutor of the highest standard for the majority of her legal career.

NATIONAL BAR ASSOCIATION

Chairman Grassley and Ranking Member Leahy -2-

January 29, 2015

Her life experience—growing up in North Carolina as the daughter of a librarian and a Baptist Minister and granddaughter of a Baptist Minister—provides a firm foundation for understanding the complex issues of the criminal justice system. As a career prosecutor, she has had the benefit of personally witnessing the imbalance of the application of the law to certain individuals over others. We believe that these experiences will allow her to empathize not only with the high class and middle class populations, but with the underserved and underprivileged as well.

Ms. Lynch has also demonstrated the ability to be non-partisan in her execution of her craft. Examples are found in the fact that Ms. Lynch's office indicted Republican Congressman Michael Grimm and prosecuted Democratic politicians Pedro Espada Jr. and William Boyland, Jr. Ms. Lynch has also demonstrated that she has no tolerance for corporate fraud and corporate law violations. Ms. Lynch investigated Citigroup over mortgage securities sold by the bank, resulting in a \$7 billion settlement; and was involved in the \$1.2 billion settlement with HSBC over violations of the Bank Secrecy Act. She continued to show her commitment to upholding the law and ensuring that the civil rights of the people of our nation are not violated. She has not shied away from making her position known, even in some of the most controversial and high profile police brutality cases, such as those involving Abner Louima and more recently Eric Garner.

Given the summary of her qualifications and the urgent and divisive nature of current challenges facing our nation like equal protection and police brutality, I urge you and your colleagues in the Senate to act swiftly to confirm Ms. Lynch as the 83rd Attorney General of the United States.

Sincerely,



Pamela Meanes
72nd President, National Bar Association

cc: Ted Lehman
Chief Counsel for Nominations
ted_lehman@judiciary-rep.senate.gov

Kristine Lucius
Staff Director/Chief Counsel
kristine_lucius@judiciary-dem.senate.gov

RECEIVED FEB 12 2015

January 25, 2015

The Honorable Senator Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
427 Russell Senate Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

I am the Chief Security Officer of Citigroup Inc., and formerly served as the Special Agent in Charge of the United States Secret Service, New York Field Office, from 2007 through 2012. During this time, I had the privilege and good fortune to work closely with Loretta Lynch. I submit this letter in support of her nomination to be the Attorney General of the United States. She is unquestionably one of the most talented, professional and exceptional prosecutors I've met in my twenty five years of public service. The depth, range and success of her prosecutions, which have included international terrorism, organized crime, civil rights violations and public corruption, demonstrate her competency as a prosecutor and illustrate her leadership as the Chief Law Enforcement Official for the Eastern District of New York.

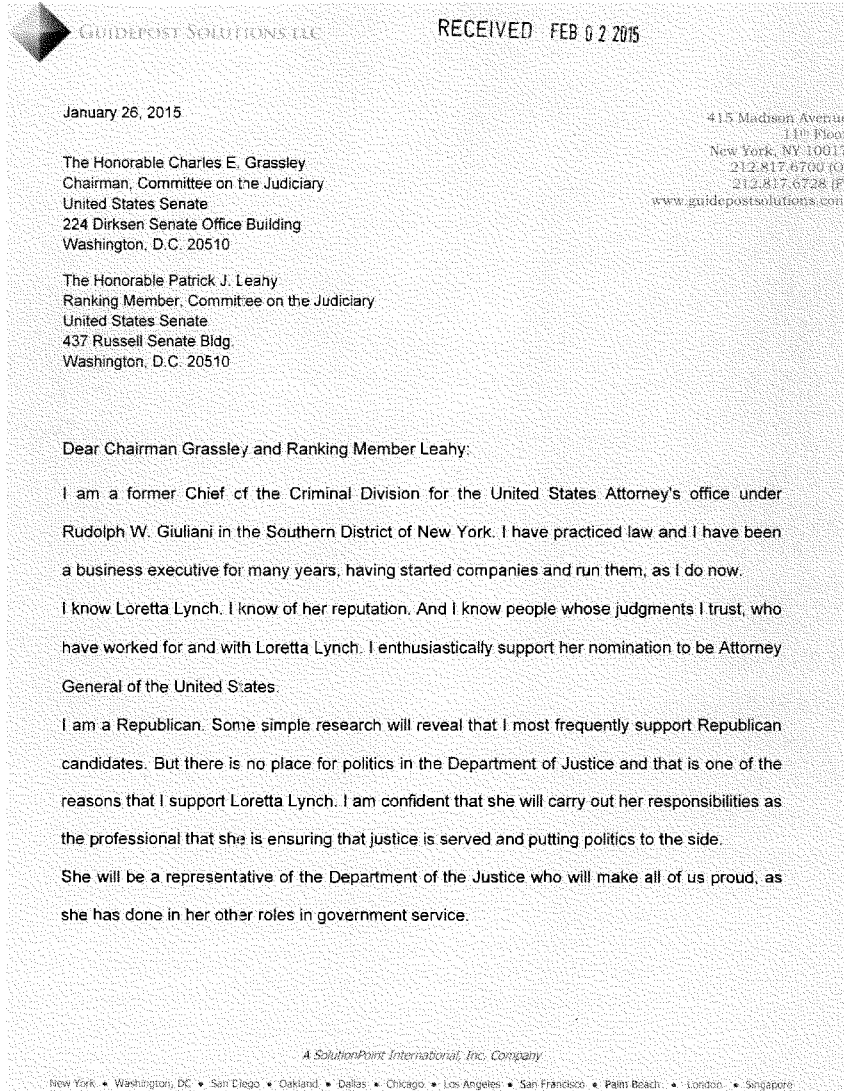
During our tenure together, I had the opportunity to work closely with Loretta in combatting a number of advanced and persistent financial crimes where I observed her skill as a prosecutor and witnessed her passion for public service. In each case, she demonstrated her pride of accomplishment and her compassion for the people she served. Without exception, Loretta led every investigation and prosecution with absolute intellectual honesty based on the facts and the law.

Loretta holds the respect of all who have served with her in the New York law enforcement community and is notably admired for her unwavering integrity and her great humility. She is truly worthy of the trust and confidence of the American people, and I humbly offer my support for her nomination to serve as our nation's next Attorney General.

Sincerely,



Brian G. Parr
Chief Security Officer
Citigroup Inc.
Brian.Parr@citi.com
212-559-4250





GUIDEPOST SOLUTIONS LLC

We need a strong Attorney General who will make the difficult decisions that are pending and the new ones that are bound to arise. She has demonstrated that she has that capability. President Obama has made a wise choice. I hope that my party and others will concur.

Respectfully submitted,

Bart M. Schwartz
Chairman
Guidepost Solutions LLC
bschwartz@guidepostsolutions.com
212.817.6733

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National Association of Women Lawyers®
the voice of women in the law®

February 3, 2015

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 Committee on the Judiciary
 United States Senate
 135 Hart Senate Office Building
 Washington, DC 20510

The Honorable Patrick J. Leahy
 Ranking Member
 Committee on the Judiciary
 United States Senate
 433 Russell Senate Office Building
 Washington, DC 20510

Re: **Nomination of Loretta E. Lynch**

Dear Senators Grassley and Leahy and Members of the Judiciary Committee:

I am writing on behalf of the National Association of Women Lawyers ("NAWL"). NAWL is the oldest national organization devoted to the interests of women lawyers and women's rights. Founded in 1899, NAWL has a long history of serving as an educational forum and an active voice for the concerns of women in the legal profession. Now that the hearings are concluded, we write to request a swift confirmation of Loretta E. Lynch for Attorney General of the United States.

The Attorney General is charged with enforcing the rule of law and developing policies and priorities for prosecuting violations of the rule of law. Ms. Lynch's legal career shows a long record of exemplary service ensuring the safety of the public she swore to protect. Her experience in both private practice and public office has given her a broad perspective on the criminal process that will serve the country well as she is setting the agenda for the Department of Justice.

Those who have worked with Ms. Lynch describe her as a calm and thoughtful leader in the face of chaos. She directed investigations and enforced laws protecting the public from terrorism, cybercrime, crimes against children, white collar crime, and civil rights violations, among others. She rose quickly through the ranks within the US Attorney's Office for the Eastern District of New York and was appointed and confirmed to lead that office on two separate occasions. Ms. Lynch has dedicated herself to public service not only in the US Attorney's Office, but also by offering her advice and experience to numerous non-profit and legal organizations.

As I stated in an earlier letter, we are at a point in the rich history of the legal profession in the United States where women have comprised nearly half of law school graduates for many years. Yet, women continue to be significantly underrepresented at the highest levels of our profession. There has only been one woman United States Attorney General in the history of our nation, and we believe it is time for another. The confirmation of a woman of color for the Attorney General position will be historic, and we believe Ms. Lynch is deserving of this historic role.

We respectfully recommend a swift conclusion to the confirmation process of Ms. Lynch by the Senate so she may start to make an impact as the Attorney General of the United States.

Respectfully yours,



Lisa M. Passante
President



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February 3, 2015

The Honorable Charles Grassley, Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Patrick Leahy, Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

**THE NATIONAL IMMIGRATION LAW CENTER URGES
CONFIRMATION OF LORETTA LYNCH AS ATTORNEY GENERAL**

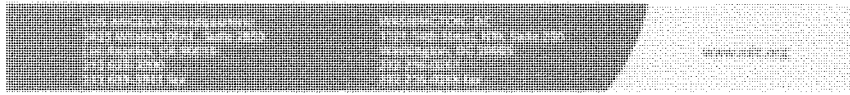
Dear Chairman Grassley and Ranking Member Leahy,

On behalf of the National Immigration Law Center (NILC), I write to urge your support for the historic nomination of Loretta Lynch to be the United States Attorney General. Based on her 30-year career, it is clear that U.S. Attorney Lynch is a highly qualified nominee to lead the Department of Justice, and the Senate Judiciary Committee should swiftly vote to confirm her.

NILC is the primary national organization in the U.S. exclusively dedicated to defending and advancing the rights of low-income immigrants. We believe that all people who live in the U.S. —regardless of their race, gender, immigration and/or economic status—should have the opportunity to achieve their full human potential. We are at the forefront of many of the country’s greatest challenges when it comes to immigration issues, and play a leadership role in addressing the real-life impact of policies that affect the ability of low-income immigrants to prosper and thrive.

U.S. Attorney Lynch has a powerful record as a proven leader within the Department of Justice. Throughout her career, she has distinguished herself as a tough, fair, and independent lawyer who has led one of the most active and effective U.S. Attorney’s offices in the country. The Senate has confirmed her twice to lead the U.S. Attorney’s office for the Eastern District of New York (EDNY), first from 1999 to 2001, and again from 2010 to the present. Her vision and capable management consistently deliver results, and she has demonstrated the ability to advance critical Department of Justice priorities to keep the American people safe.

Given her solid legal credentials in the public and private sector, it is unsurprising that U.S. Attorney Lynch defends President Obama’s executive action on immigration as legally sound. Indeed, Ms. Lynch’s opinion on President Obama’s



Immigrant Accountability Executive Actions announced on November 20, 2014, conforms to the legal opinion of scores of legal experts around the country: the president has strong legal and historical precedent to act. This legal authority of the executive branch is derived from the U.S. Constitution, statutes, regulations, and Supreme Court decisions.¹ Additionally, there are ample historic precedents where Republican and Democratic administrations alike exercised similar executive authority to address the nation's immigration issues.

Like many low-income immigrants, including the 11 million aspiring Americans currently living, working, and studying in our country, U.S. Attorney Lynch was born to a humble family as the daughter of a preacher, and a librarian, who once picked cotton to earn money for college. If confirmed, U.S. Attorney Lynch would be the first African-American woman to serve as U.S. Attorney General. She is an inspiration to women of color and all Americans who seek the American dream.

As a legal organization with decades of experience in immigration law, we strongly support the nomination of U.S. Attorney Lynch to be the Attorney General. She is an outstanding nominee and the Senate should swiftly vote to confirm her.

If you have any questions, please do not hesitate to contact me at (213) 674-2812. Thank you for your careful consideration.

Sincerely,



Marielena Hincapié, Esq.
Executive Director

¹ *President Obama's Executive Overreach on Immigration, Hearing Before the House Comm. on the Judiciary*, 113th Cong. 81-93 (2014) (statement of Marielena Hincapié, Executive Director, Nat'l Immigration Law Center).

961

Jan. 27. 2015 12:44PM

No. 2830 P. 1



STATE ATTORNEY
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
F. R. GRATAM BUILDING
1350 N.W. 12TH AVENUE
MIAMI, FLORIDA 33136-2111

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

TELEPHONE (305) 547-0100
www.miamisao.com

FAX COVER SHEET

TO: Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee

FROM: Melba V. Pearson
President, National Black Prosecutors Association

MESSAGE: Please see attached letter of support for the nomination of Loretta Lynch for Attorney General. A signed original has been overnighted to your office as well. Please do not hesitate to contact me with any questions.

NUMBER OF PAGES: 4 (including this cover page)

NUMBER DIALED: 202.224.3479

DATE AND TIME SENT: January 27, 2015

BY: Melba Pearson

If you have any problems or questions, please call: Melba Pearson, at: (305) 547-0410. Thank you.

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135 Hart Building
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member
United States Senate
437 Russell Senate Office Building
Washington, DC 20510-4502

RE: Letter of Support for Loretta Lynch
For Confirmation as 83rd Attorney General of the United States

Dear Senators Grassley and Leahy:

On behalf of the members of the National Black Prosecutors Association (NBPA), I write to express our endorsement of Attorney General Nominee Loretta Lynch. We strongly urge the Senate Judiciary Committee to quickly and fairly confirm the nomination of Loretta Lynch to serve as our next Attorney General, before Senate recesses in February.

Founded in 1983, the NBPA is a national organization comprised of local, state, and federal prosecutors, dedicated to the advancement of African Americans in the field of prosecution. As a premier professional law enforcement organization, we are committed to identifying and supporting the most qualified leaders in our profession. The NBPA has previously recognized Ms. Lynch during our 2013 national conference for her hard work, extraordinary leadership, and unwavering dedication to the enforcement of this nation's laws as a United States Attorney.

Ms. Lynch has dedicated her life to public service and continues to have an exemplary career, including two presidential appointments as the United States Attorney for the Eastern District of New York. Ms. Lynch's academic achievements speak volumes. She received her A.B., cum laude, from Harvard College in 1981. She received her J.D. from Harvard Law School in 1984. As a federal prosecutor, Ms. Lynch served with distinction, first on the front lines as a line prosecutor, then while running a branch office, to her two terms as United States Attorney. As the United States Attorney for the

32nd Annual Conference & Job Fair * July 19, 2015 - July 25, 2015 * Fairmont Washington, D.C., Georgetown Hotel

www.blackprosecutors.org

Eastern District of New York, Ms. Lynch has overseen one of the nation's premier litigation offices, representing the United States in three of the five boroughs of New York City – Brooklyn, Queens and Staten Island – and both suburban counties on Long Island – Nassau and Suffolk. Her District encompasses approximately eight million people of diverse socio-economic backgrounds. As New York's top law enforcement officer, she oversees all federal criminal and civil investigations. Her office has successfully prosecuted virtually every type of federal crime, while her Civil Division includes an expansive variety of both affirmative and defensive litigation. She defends the federal government and its officials from constitutional and procedural challenges and from civil actions alleging claims in a broad spectrum of practice areas. She has been on the forefront of national cyber security; Ms. Lynch has also made community outreach a priority. Ms. Lynch is the Immediate Past Chair of the Attorney General's Advisory Committee and sits on the Department of Justice's Diversity Council. She is the epitome of a public servant.

A consensus builder in her work in both the private and public sectors, Ms. Lynch is a "lawyer's lawyer," who has earned the respect and admiration of a broad range of colleagues, lawyers, and leaders for her deep knowledge of – and extensive experience with the law in both civil and criminal arenas. Ms. Lynch allows neither politics nor racial tensions to inform her prosecution. Rather, she remains true to her prosecution oath and commitment to the American people, and seeks justice. It is this character and commitment to the very principles on which the Department of Justice stands that distinguishes Lynch from her peers, making her the best person to serve as our next Attorney General.

Additionally, Lynch has a reputation of being an outstanding prosecutor and remarkable person, with great integrity and work ethic. Lynch will use the very principles that she has built her career upon and lives her life by to serve this nation as a non-partisan, chief law enforcement officer and presidential advisor, whose decisions are driven not by partisan politics, but by the law.

Based on the foregoing, we support Ms. Lynch, without reservation, as our next United States Attorney General. We urge every senator to set aside any partisan differences in favor of confirming her nomination. This nation needs Ms. Lynch as Attorney General. We are confronting the most tumultuous times in the legal system; Ms. Lynch as Attorney General will ensure that America fulfills the promise engraved on the United States Supreme Court's front door: "*Equal Justice Under Law*".

Jan. 27, 2015 12:46 PM No. 2830 P. 4

We welcome the opportunity to answer any questions that you may have.
Thank you for your consideration.

Sincerely,


Meiba V. Pearson,
NBPA President

01/27/2015 12:40 PM (GMT-05:00)

The Estée Lauder Companies Inc.
767 Fifth Avenue
New York, NY 10153
Tel: 212-572-3980
smoss@estee.com

Sara E. Moss
Executive Vice President
and General Counsel

ESTÉE
LAUDER
COMPANIES

January 14, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United State Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg.
Washington, D.C. 20510

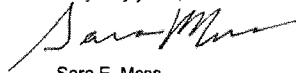
Dear Chairman Grassley and Ranking Member Leahy:

I am the Executive Vice President and General Counsel of The Estee Lauder Companies. I write in support of the nomination of Loretta Lynch to be Attorney General of the United States. I have known Loretta for almost twenty years. During that time I have been consistently impressed with her courage, character and effectiveness. Loretta Lynch is a person of great integrity who will enforce the law in a clear, effective and non-partisan way.

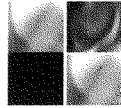
Estee Lauder is an American company with global sales of over twenty billion dollars around the world. Almost all of our innovation takes place in the United States and we employ over 40,000 people in our headquarters, factories and our retail stores throughout America. It is critically important to Estee Lauder that the law be strongly enforced both here and abroad. I know that Loretta Lynch will do that.

Loretta Lynch has the skill, knowledge and experience to deal with all of the current critical legal issues, including cyber threats, terrorism, fraud and infringement of intellectual property. I know that she will be an outstanding Attorney General. I wholeheartedly support her nomination. For all of the reasons above, I ask the Judiciary Committee to recommend Loretta Lynch to be the next Attorney General of the United States.

Very truly yours,



Sara E. Moss
Executive Vice President and General Counsel



THE ALLIANCE OF NORTH CAROLINA
Black Elected Officials

February 23, 2015

The Honorable Charles Grassley Chairman,
Committee on the Judiciary United State Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Loretta Lynch as United States Attorney General

Dear Chairman Grassley:

On behalf of over 700 black elected officials that comprise the Alliance of North Carolina Black Elected Officials, I am pleased to convey our support of the Honorable Loretta E. Lynch for U.S. Attorney General. As elected leaders from across the state, we are elated about the selection and pending nomination of Loretta Lynch, a North Carolina native and distinguished legal professional with impeccable credentials and qualifications.

In keeping with this nation's enduring legacy of exceptional public service and equal opportunities, Loretta would be the first African-American woman to hold the office entrusted to guide the world's central agency for enforcement of federal laws. She has achieved a blazing trail of history-making accomplishments during her stellar legal career. Since completing the prestigious Harvard Law School in 1984, Loretta has served in both the public and private sectors with distinction and dedication. In addition, she has an exceptional record of prosecuting major cases, while heading the U.S. Attorney's office twice. Knowing her strong foundation and capabilities, we are confident that her role of U.S. Attorney General will serve as strong example of her unwavering commitment to protect the rights of all citizens and serve as a model of judiciary excellence.

While our support carries major historical significance, we also honor her pending nomination as the nation's top legal public servant because she is immensely qualified. We know, for example, that Loretta was a high achieving, and well-rounded student in North Carolina public schools who benefitted from the power of education beyond the classroom. Nurtured by a supportive family, her first impressions regarding the necessity of justice in our world came while observing her father, Rev. Dr. Lorenzo Lynch, in his years as a noble civil rights leader and faith leader.

In summary, there is no question that Loretta Lynch is imminently prepared to serve as U.S. Attorney General. As a proud North Carolina native, she is a skilled, successful and independent minded prosecutor who is well qualified to serve as U.S. Attorney General. We sincerely and gratefully urge your support and nomination of Loretta E. Lynch as the next Attorney General of the United States.

Sincerely,

Richard Hooker, Jr.
Chair, Alliance of NC Black Elected Officials



HUMAN
RIGHTS
CAMPAIGN®

February 11, 2015

The Honorable Charles Grassley, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

The Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual, and transgender (LGBT) equality, urges you to support the nomination of Loretta E. Lynch to be Attorney General of the United States. Ms. Lynch is exceptionally well-qualified to serve as Attorney General.

Ms. Lynch is a dedicated public servant. She has spent much of her career working as a prosecutor, earning a reputation as a tough, non-partisan attorney, committed to the rule of law. During her notable career, Ms. Lynch has prosecuted financial fraudsters who have preyed on America's working class, officials who have violated the public's trust, and individuals and groups who have sought to inflict terror on our society.

The Department of Justice is the primary law enforcement agency of the United States. As a community that is particularly vulnerable to bias-motivated violence, the LGBT community supports the appointment of an Attorney General who is committed to combating this national problem. While acting as United States Attorney for the Eastern District, Ms. Lynch has demonstrated a clear understanding of the dynamics of hate crimes – that a hate crime is not only a crime against one person, but an attack against an entire community. Her vigilant prosecution of hate crimes assures that she will continue to lead a Department that takes hate-based violence seriously.

In her confirmation hearing, Ms. Lynch reiterated her promise to ensure that the Constitution remains her lodestar. We believe she will, as she has done throughout her two tenures as a United States Attorney, continue to protect the civil and human rights of all Americans and maintain an unwavering commitment to upholding the United States Constitution.

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Ms. Lynch's nomination has broad support, including former FBI Director Louis Freeh and former New York City Mayor Rudy Giuliani. In addition, she was twice confirmed unanimously as United States Attorney.

The Human Rights Campaign urges you to vote to confirm Loretta E. Lynch as Attorney General.

Sincerely,

A handwritten signature in black ink that reads "David Stacy". The signature is written in a cursive, flowing style.

David Stacy
Government Affairs Director



**International Association of
Chiefs of Police**

44 Canal Center Plaza, Suite 200
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Fax: 703-836-4543
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James M. Gabbard
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Vero Beach Police Department
Vero Beach, FL

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Officer**
Vincent Talucci
Alexandria, VA

Deputy Executive Director
Gwen Boniface
Alexandria, VA

February 25, 2015

The Honorable Charles Grassley
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

On behalf of the more than 22,000 members of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of Ms. Loretta Lynch to be the next Attorney General of the United States. The IACP believes that Ms. Lynch's years of service have clearly demonstrated that she has the qualifications and experience necessary to be an effective leader of the U.S. Department of Justice.

Ms. Lynch's broad base of experience provides her with a unique perspective on criminal justice issues. Her service as both a front line prosecutor and as a U.S. Attorney have ensured that she has a thorough understanding of the crucial role played by state, local, and tribal law enforcement agencies.

As a result, the IACP believes that, as Attorney General, Ms. Lynch's background will allow her to foster and enhance the crucial partnership among federal, state, local, and tribal law enforcement agencies.

The IACP urges you to confirm Ms. Lynch's nomination rapidly.

I look forward to your positive response to this request. If you have any questions on this matter, please contact the IACP at 703-836-6767.

Sincerely,

Richard Beary
President

Serving the Leaders of Today and Developing the Leaders of Tomorrow



January 21, 2015 **AMERICAN COMMITMENT**
 The Honorable Charles Grassley
 Chairman, Committee on the Judiciary
 United States Senate
 Washington, D.C. 20510

CFIF **TPN**
 CENTER FOR INDIVIDUAL FREEDOM **TEA PARTY NATION**

American Civil Rights Union

Dear Mr. Chairman:

We write to you today to express our concerns that Loretta Lynch, the President's nominee for attorney general of the United States, and prosecutors in her employ in the office of the U.S. Attorney for the Eastern District of New York, may have violated the rights of crime victims while making plea deals with defendants in so-called "white collar" cases. We believe that this is emblematic of a larger problem – to wit, the failure of the executive branch to enforce laws as written, and indeed the deliberate circumvention of the laws as written.

The issue is of respect for the law. For example, under federal sentencing law, specifically the Mandatory Victims Restitution Act, restitution is "mandatory" as to defendants who are sentenced for certain designated crimes. The statute, 18 U.S.C. 3663A(a)(1) begins, "Notwithstanding any other provision of law...." a defendant who is convicted of certain crimes must have a sentence of restitution imposed. In *Dolan v. United States*, 560 U.S. 605, the Supreme Court held in 2010 that sentencing errors or omissions that result in a failure to award restitution may later be corrected, so holding because Congress made its intent clear when it used that language, "Notwithstanding any other provision of law." But it appears to be the pattern and practice in the Eastern District to allow cooperators to keep the money they've pled guilty to stealing, in exchange for "good" cooperation.

In one case, the Felix Sater matter, Ms. Lynch's office stands accused of having failed to notify the victims in a \$40 million stock swindle – as is clearly required by the federal Crime Victims' Rights Act, 18 U.S.C. 3771 – that a guilty plea had been obtained from one of the defendants in the case and that a sentencing agreement had been worked out. While the plea in 1998 preceded Ms. Lynch's first tenure as the EDNY prosecutor, and the sentencing a decade later preceded her second tenure, after Ms. Lynch took office, she continued the concealment of the case, and failed to notify victims of any further proceedings in the case, notwithstanding her obligations under the CVRA. Moreover, after Ms. Lynch's first tenure commenced, she used Mr. Sater as a

cooperating witness against many co-conspirators who pled guilty, and repeatedly adjourned Mr. Sater's sentencing, never revealing to his victims any of the proceedings, and failed to reveal to the co-conspirators, it seems, that he would be permitted to keep the money he stole in exchange for his cooperation, implicating, of course, grave issues of prosecutorial misconduct – to wit, the failure to disclose Brady materials.

According to an investigation conducted by *the Washington Times*' Jim McElhatton, Mr. Sater's plea resulted in a minimal fine, no order of restitution, and no incarceration. If the victims in this case had been given proper notice -- indeed any notice, again as required by law under the CVRA -- that a settlement was in the offing they would have had the opportunity to find representation, submit restitution claims, seek recompense from the defendant and insure justice was done.

None of this occurred. Further, when news of the deal began to leak, Ms. Lynch's office (during her tenure) took what appear to be extraordinary steps to keep the whole business under wraps. If her office cut secret, sweetheart deals with cooperative defendants that allowed them to profit from their crimes, while depriving victims of their legal right to pursue the recovery of losses, then she has violated the law in the name of enforcing it. The failure to order restitution is now a matter of public record, yet Ms. Lynch's office has still not sought to have Mr. Sater resentenced to make restitution to the victims, as *Dolan v. United States* permits.

We ask that you to take the opportunity to use her confirmation hearing to raise this issue with her. If a satisfactory explanation cannot be found and if, indeed, she admits that her office deliberately and knowing ignored the requirements of federal law to secure a conviction and that they then obstructed efforts to keep that information from coming to light the committee needs to consider long and hard her fitness to lead the United States Department of Justice.

Sincerely,

George Landrith Frontiers of Freedom	Curt Levey Committee for Justice	David Williams Taxpayers Protection Alliance
Colin Hanna Let Freedom Ring	Judson Phillips Tea Party Nation	Paul Caprio Family PAC Federal
Phil Kerpen American Commitment	Richard Viguerie ConservativeHQ.com	William H. Shaker Rule of Law Committee
James L. Martin 60 Plus Association	Susan A. Carleson American Civil Rights Union	Jim Backlin Christian Coalition of America
Michael Ostrolenk Liberty Coalition	Mat Staver Liberty Counsel Action	Kristin Fecteau Campaign to Free America
Melissa Ortiz Able Americans	Kay R Daly Coalition for a Fair Judiciary	Larry Pratt Gunowners of America
Seton Motley Less Government	Stephen Stone RenewAmerica	Timothy H. Lee Center for Individual Freedom
Niger Innis TheTeaParty.net	C. Preston Noell III Tradition, Family, Property, Inc.	Sherwood (Woody) Barnette Frontier Harvest Ministries of Pittsburgh
Andrew Langer Institute for Liberty	Sandy Rios American Family Association	

cc: Republican Members of the Judiciary Committee

LEGAL momentum
**The Women's Legal Defense
 and Education Fund**

February 25, 2015

Carol Robles-Román, President and CEO
 Legal Momentum

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Senator Charles Grassley, Chair
 Committee on the Judiciary
 Dirksen Senate Office Building - Room 224
 Washington, DC 20510

Senator Patrick Leahy, Ranking Member
 Committee on the Judiciary - Room 224
 Dirksen Senate Office Building
 Washington, DC 20510

Re: Letter in Support of Loretta Lynch, nominee for United States Attorney General

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of Legal Momentum, as well as the other groups whose names appear below, I write in support of the candidacy of Loretta Lynch for U.S. Attorney General. For 45 years, Legal Momentum has served as the voice for, and has worked to protect, women and girls. We work to transform our society into one where all women and girls are economically secure, empowered to make their own choices, and live and work free of discrimination and violence.

Ms. Lynch has had an illustrious career in law enforcement. As United States Attorney for the Eastern District of New York (EDNY), Loretta Lynch made protecting the most vulnerable members of our society a hallmark of her tenure. Along these lines, she distinguished herself as a leader in fighting human trafficking which our government has rightly called, "modern day slavery". She has also worked tirelessly to protect child victims from exploitation by people they know and trust.

Loretta Lynch's Anti-trafficking Work:

Under Loretta Lynch's guidance, the United States Attorney's Office's anti-trafficking program indicted over 55 defendants in sex trafficking cases and rescued over 110 victims of sex trafficking, including over 20 minors. In addition, 18 children, many of whom were being held by sex traffickers in Mexico, have been reunited with their victim-mothers. Notable human trafficking prosecutions won by EDNY under Lynch's leadership include:



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 Policy Office: 1101 14th Street, NW, Ste 300, Washington, DC 20005 202.326.0040

www.legalmomentum.org

- *United States v. Lopez-Perez et al.*: In February 2014, three brothers convicted of sex trafficking were sentenced to double-digit prison terms for running a trafficking ring that enticed victims, as young as 14 and 15 years old, to be transported illegally into the United States and forced to work as prostitutes in New York City and elsewhere. The defendants beat and sexually assaulted the victims to compel them to work and to punish them for not earning enough money, and forced them to turn over all of their earnings to the defendants. The defendants also threatened violence against the victims' family members to prevent the victims from running away.
- *United States v. Rivera, et al.*: Antonio Rivera, the owner of several New York bars, was sentenced to 60 years' imprisonment for his role in a sex trafficking and forced labor ring. Rivera's co-defendants, John Whaley and Jason Villaman, were sentenced to 25 and 30 years, respectively. Evidence at trial established that the defendants recruited and harbored in the United States scores of undocumented Latin American immigrants, and forced them to work as waitresses in Rivera's bars. Rivera and others used violence, including rapes and beatings, as well as fraud and threats of deportation, to compel the victims to work and prevent them from reporting the illegal activity to police.
- *United States v. Granados, et al.*: Seven members and associates of the Granados-Hernandez sex trafficking organization were convicted of trafficking and smuggling women and girls to the United States from Mexico for the purpose of prostitution. The four lead defendants, Eleuterio Granados-Hernandez, Samuel Granados-Hernandez and their cousins, Angel Cortez-Granados and Antonio Lira-Robles, were sentenced to terms of imprisonment ranging from 15 to 22 years. Six children were reunited with their mothers as a result of the investigation.
- *United States v. Johnson ("Dollar Bill")*: In August 2012, William Johnson (also known as "Dollar Bill") was sentenced to 17½ years in prison for sex-trafficking a minor. The defendant kept a 15-year-old girl in his home in St. Albans, Queens, prostituted her, and kept the prostitution earnings for himself. At sentencing, the government established that the 15-year-old victim was just one of several underage girls and women Johnson prostituted out of his Queens home.
- Under Loretta Lynch's leadership, the EDNY prosecuted one of the largest criminal alien employment investigations ever and secured the largest criminal immigration forfeiture in history. In that case, 7-Eleven store owners and their confederates ran what Loretta Lynch called "a modern day plantation system," exploiting their alien employees, stealing their wages, and requiring them to live in unregulated boarding houses. In September 2014, five of the defendants pleaded guilty to the charges.
- *United States v. Estrada-Tepal, et al.*: Three brothers are pending trial on charges of trafficking women from Mexico to the United States and causing them to engage in commercial sex acts through force, fraud and coercion. The defendants were arrested in January 2014.
- *United States v. Paul Rivera, et al. ("TF Mafia case")*: In this case, currently scheduled for trial in April 2015, the defendants are charged with racketeering conspiracy and racketeering, as well as a host of substantive crimes including murder, drug trafficking, money laundering and witness tampering, as well as sex trafficking. The crimes were allegedly committed in connection with a Brooklyn-based gang called TF Mafia.

Loretta Lynch's Work on behalf of Exploited Children:

In addition to combating trafficking under Loretta Lynch's leadership, the EDNY brought charges against criminals who subjected children to horrific abuse and exploitation. Recent examples include:

- *Prosecution of Child Exploitation:* In July 2014, an EDNY jury convicted Bebars Baslan of traveling and attempting to engage in sexual acts with a child under 12, and child pornography crimes. Baslan is scheduled to be sentenced in February 2015.
- *Prosecution of Pediatrician for Sexually Abusing Patients:* In April 2014, pediatrician Rakesh Punn pleaded guilty to sexually exploiting three of his patients under the guise of providing medical treatment. He faces a sentence of up to 30 years in prison.
- *Prosecution of Joseph Valerio:* Valerio, a real estate mogul from Smithtown, Long Island, was convicted on 15 counts of child exploitation relating to two victims. Valerio used email to communicate with a co-conspirator in Ukraine to arrange for images of a toddler to be produced for him and also produced images of a local New York victim. The court ordered the forfeiture of the defendant's home at the conclusion of the trial. He is awaiting sentencing.
- *U.S. v. Camille Solomon-Eaton:* The defendant was convicted at trial of thirteen counts for sexually exploiting her two-year-old daughter and soliciting the sexual exploitation of five other children. Solomon-Eaton took sexually explicit photos of her two-year-old daughter and texted them to a man that she had met in an online chat room. In October 2014, the defendant was sentenced to 17 years imprisonment.
- *Project Safe Childhood:* During Loretta Lynch's tenure, the dedicated prosecutors of EDNY have brought 173 prosecutions for child exploitation and child pornography in coordination with the Department's Project Safe Childhood.

Throughout her distinguished career, Loretta Lynch has sought to protect the most vulnerable and powerless members of our communities, showing herself to be a public servant in the true sense of the word. She has worked tirelessly to safeguard our communities, enforce federal laws and done so without fear or favor. We can think of no better candidate for the post of United States Attorney General.

Very truly yours,

Legal Momentum

National Organizations

Futures Without Violence
 Jewish Labor Committee
 National Coalition Against Domestic Violence
 National Council of Jewish Women
 National Domestic Violence Hotline
 National Resource Center on Domestic Violence

State & Local Organizations

New York

Legal Information for Families Today (LIFT)
New York State Coalition Against Sexual Assault
Girls For Gender Equity

OFFICE OF THE CHIEF EXECUTIVE OFFICER
 750 First Street NE, Suite 800, Washington, DC 20002-4241
 202.408.8600 • FAX 202.336.8713 • amcclellan@naswdc.org • SocialWorkers.org



Angelo McClain, PhD, LCSW
 Chief Executive Officer

January 27, 2015

The Honorable Chuck Grassley, Chairman
 The Honorable Patrick Leahy, Ranking Member United States Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510-6050

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of our more than 135,000 members and 50 chapters in the United States, the National Association of Social Workers (NASW) enthusiastically supports Loretta Lynch's nomination to succeed Eric Holder as the Attorney General of the United States.

Throughout NASW's 60 years of existence, it has been a champion of diversity, social justice, and civil and human rights. Therefore, it is important for us to point out that Ms. Lynch, who would be the first African American woman to serve as the Attorney General of the United States. In that NASW believes that bipartisan support of Ms. Lynch will send a strong message to America, it is gratifying that her sense of independence and conviction to uphold the laws of the United States has led to both Republicans and Democrats that have called for her confirmation as Attorney General.

However, perhaps the most important reason NASW supports her confirmation is because she has been unafraid to pursue prosecution for the rich and powerful that violates public trust. Her career is replete with prosecuting corrupt politicians in both parties, law enforcement officers who abuse their authorities and white collar criminals who break the laws in search of ill-gotten financial gains.

Beyond that point, Ms. Lynch has taken positions and pursued protections for those who are less able to fend themselves from abuse by the powerful. As the federal Prosecutor for the Eastern District of New York (which includes New York City), she aggressively sought the prosecution of:

- New York City Police Officers who viciously abused and sodomized Haitian immigrant Abner Louima which led to the conviction of his abusers;
- A major criminal ring that defrauded senior citizens and;
- The infamous Bernie Madoff who defrauded investors out of billions of dollars, where she was the lead prosecutor

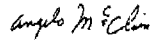
Ms. Lynch also had a major role in ending widespread discrimination in hiring practices of the New York City Fire Department. In 2014, she joined the Department of Justice's Civil Rights Division negotiated a settlement with New York City that authorized compensation for African American fire department applicants who were discriminated against, and helped to develop a process where minorities could rise to management positions based on their experience and qualifications.

On the international human rights front, in 2005 Ms. Lynch was appointed to and served as a Special Counsel for the *International Criminal Tribunal for Rwanda*. This appointment stemmed from her expertise, advocacy and case work in defending victims of genocide such as that seen in Rwanda, and credentials are outstanding. In her 30 year career, she has twice served as United States Attorney for the Eastern District of New York. Additionally, she has worked as a partner at Hogan & Hartson, L.L.P., an adjunct professor at St. John's University School of Law, as the Eastern District's Chief of the Long Island Office, and as an assistant U.S. attorney. In all of these roles, she has been tough, fair, and effective.

As far as NASW is concerned, Ms. Lynch has the background needed to continue Attorney General Eric Holder's strong legacy of standing up for civil rights and ensuring equal justice for all Americans. We reemphasize that Ms. Lynch has been a leader in fostering diversity both in the legal world and in law enforcement. It is clear to us that she understands the importance of justice, and works tirelessly to achieve it for all Americans.

Ms. Lynch's background, experience and values are nearly exactly compatible to what NASW would expect from the chief law officer of the United States. Law enforcement and public safety are important to NASW. However, protection of our most vulnerable population from abuse, fraud, unequal justice is also important to NASW and its members. We think Ms. Lynch will execute her duties with those issues in mind.

Sincerely,



Angelo McClain, PhD, LICSW
Chief Executive Officer
National Association of Social Workers



March 3, 2015

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Harry Reid
Senate Minority Leader
522 Hart Senate Office Building
Washington, DC 20510

Re: Letter of support for the nomination of Loretta Elizabeth Lynch for United States Attorney General

Dear Majority Leader McConnell and Minority Leader Reid,

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&As and CAPs were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navaho and Piute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP Network is the largest provider of legally based advocacy services to people with disabilities in the United States.

The Department of Justice plays a critical role in protecting the rights of people with disabilities and effectuating the promise of integration and access in the Americans with Disabilities Act and the Rehabilitation Act of 1973. We are confident that Ms. Lynch will carry on the recent ground-breaking work of the Department of Justice in advancing the employment and community integration of people with disabilities.


The Department of Justice is responsible for enforcing multiple laws that affect the lives of people with disabilities. One law of great importance to our work is the Americans with Disabilities Act and the integration mandate in *Olmstead v. L.C.*, 527 U.S. 581 (1999) that people with disabilities receive services in the

least restrictive setting to the person's liberty. The *Olmstead* decision has improved the lives of millions of people with disabilities by providing them the opportunity for full community integration in their homes, their jobs, and their daily lives.

Ms. Lynch is an exemplar leader that the Department of Justice needs to carry on its work. She has respect and support across the political spectrum because she listens to and works with people from all perspectives to accomplish significant outcomes. She has demonstrated skill inside and outside of the courtroom, including as a litigator in her multiple positions working in the U.S. Attorney's office of the Eastern District starting in 1990. She left the public life in 2001 to become a partner in the law firm of Hogan and Hartson and remained dedicated to the rights of all people and the work of enforcing United States laws.

The National Disability Rights Network strongly supports the nomination of Loretta Lynch for the position of United States Attorney General. We encourage you to confirm Ms. Lynch swiftly so that the Department can continue the important work of law enforcement as efficiently and effortlessly as possible. Her experience and understanding of the law will enable her to effectively enforce the rights of all Americans, including people with disabilities. Please contact Dara Baldwin, Public Policy Analyst, at dara.baldwin@ndrn.org or 202-408-9514 ext. 102 with any questions or concerns.

Sincerely,



Curt Decker
Executive Director

cc: United States Senate

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Past Office Box #101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

By E-Mail

DATE: December 17, 2014

TO: United States Senate Judiciary Committee
ATT: Senate Democratic Majority/Senator Patrick Leahy, Chair
ATT: Senate Republican Minority/Senator Chuck Grassley, Ranking Member

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Citizen Opposition to Senate Confirmation of U.S. Attorney Loretta Lynch as U.S. Attorney General: Requests to Testify, for Documents, & for Posting

This is to reiterate my notice to the Senate Judiciary Committee – in repeated phone calls to both its Democratic majority and its Republican minority, beginning November 10, 2014 – of the Center for Judicial Accountability’s citizen opposition to Senate confirmation of U.S. Attorney Loretta Lynch as U.S. Attorney General – and my request, as the Center for Judicial Accountability’s Director, to testify in opposition at the Senate Judiciary Committee’s public hearing on her confirmation.

As I have repeatedly stated, CJA’s citizen opposition is based on Ms. Lynch’s corruption in office as U.S. Attorney for the Eastern District of New York, covering up systemic governmental corruption in New York State, involving its highest public officers in all three government branches and key state agencies and entities responsible for their oversight. To this, I can attest from my direct, first-hand experience with Ms. Lynch, both in her first term, 1999-2001, and her present second term. Indeed, were it not for the corruption of the Justice Department’s Office of Professional Responsibility, to which, in 2001, I filed a fully-documented complaint of professional misconduct against Ms. Lynch, she would never have had a second term – nor been nominated by President Obama to be U.S. Attorney General.

Did Ms. Lynch disclose this March 23, 2001 misconduct complaint when she obtained, in 2010, President Obama’s nomination and Senate confirmation to a second term as U.S. Attorney? Did she disclose it this year in obtaining the President’s nomination to be Attorney General – and has she disclosed it now as she faces Senate confirmation? I have notified the Senate Judiciary Committee of these questions – and asked, repeatedly, for a blank copy of the “confidential” portion of the

* **Center for Judicial Accountability, Inc. (CJA)** is a national, non-partisan, non-profit citizens’ organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

questionnaire that the Senate Judiciary Committee requires nominees to complete so that I may confirm that it includes the question:

“Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for breach of ethics, unprofessional conduct or violation of any rule of practice? If so, please provide full details.”

The Senate Judiciary Committee has, for weeks, failed to furnish me with the blank “confidential” portion of its questionnaire, let alone confirm that it contains the question that it most certainly does.

As for the “public” portion of Ms. Lynch’s completed questionnaire, which I requested from my first phone calls to the Senate Judiciary Committee on November 10, 2014, specifying, in particular, my interest in her answer to its question about conflicts of interest, I have already notified the Committee’s Democratic majority and Republican minority as to the inadequacy of her answers as they appear on the “public” portion of her December 1, 2014 completed questionnaire, posted on the Senate Judiciary Committee’s webpage for her nomination, <http://www.judiciary.senate.gov/nominations/executive/pn2136-113>. The question and her answers are as follows:

“22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice’s designated ethics official to identify potential conflicts of interest. Any potential conflicts will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department’s designated agency ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I will consult with ethics officials in the Department of Justice.” (at p. 54).

In other words, Ms. Lynch has not identified ANY conflicts of interests – and refers to, but does not elucidate upon, “the terms of an ethics agreement” she has “entered into with the Department’s designated agency ethics official” – a copy of which she does not supply. As to stating that she “will consult with ethics officials in the Department of Justice”, this is, as she knows, worthless: a *carte blanche* for her to disregard conflict of interest rules and procedures and betray the duties of her office, without the slightest repercussion – as proven by the Office of Professional Responsibility’s insupportable dismissal of my fully-documented March 23, 2001 misconduct complaint against her.

So that I may properly prepare my evidence-based opposition testimony for the Senate Judiciary Committee’s confirmation hearing, please furnish me with the “public” portions of Ms. Lynch’s completed Senate Judiciary Committee questionnaires for her 2010 and 1999 confirmations as U.S. Attorney for the Eastern District of New York, as, likewise, the transcripts of her two Senate Judiciary Committee confirmation hearings – all of which I believe are compiled in bound volumes, which the Committee’s document clerk can readily provide. If videos are available, particularly of Ms. Lynch’s 2010 confirmation hearing, please advise as to how I may view them. Additionally, I would like to see the transcripts/videos of the meetings at which Ms. Lynch’s 2010 and 1999 nominations were voted out of committee, any committee reports thereon, as well as the Senate floor proceedings on her confirmations – and the Senate votes.

As I stated when I first telephoned on November 10, 2014 and repeatedly thereafter, I am available to be interviewed, under oath, by Senate counsel and investigators so that a proper assessment may be promptly made as to the seriousness of CJA’s citizen opposition. Meantime, you can discern for yourselves its *dispositive* nature from the fully-documented corruption complaints I filed with U.S. Attorney Lynch in 1999-2000 and in 2013, to which there was no investigative or appropriate response by her – and whose calamitous consequences to the People of the State of New York may be gleaned from the parade of witnesses who testified on June 8, 2009 and September 24, 2009 at hearings of the New York State Senate Judiciary Committee, held by its then chair, Senator John Sampson, and, at the September 17, 2013 hearing of the Commission to Investigate Public Corruption, at which Ms. Lynch herself testified, heralding herself and being heralded by the Commission as a corruption fighter², along with U.S. Attorney Preet Bharara, similarly heralding

² Ms. Lynch’s “public” questionnaire (at p. 8) identifies that she is annexing a copy of her written testimony for that hearing, describing it as “Testimony before the Moreland Commission in my capacity as a Department official on issues concerning public corruption in New York State”. Her written testimony, which was essentially her oral testimony, reads in pertinent part:

“As the United States Attorney for the Eastern District of New York, I am honored to lead an office with a long tradition of fighting public corruption, an office that has brought many of the leading cases of our times....

Our current cases continue our rich tradition of protecting the public fisc and attempting to safeguard the public’s faith in the political system. That faith, however, cannot help but be shaken by the recent history of self-interest and double-dealing our office and others have uncovered....

Based on our experience, we have identified certain core principles that can act as effective counter measures to a culture of corruption.


First – rules that hold politicians accountable for the fiscal decisions they make with taxpayer monies and require their acknowledgment of their responsibilities to certify appropriate use.

himself and so-heralded.

Both the corruption complaints and the videos of the hearings are posted on CJA's website, www.judgewatch.org, accessible via the prominent link: "CJA's Citizen Opposition to Senate Confirmation of U.S. Attorney Loretta Lynch as U.S. Attorney General".

Finally, inasmuch as the Senate Judiciary Committee's webpage for Ms. Lynch's nomination posts a December 3, 2014 letter of support signed by four former U.S. Attorneys for the Eastern District of New York, under the heading "Letters Received:", I request that this letter of citizen opposition be posted, as well.

Thank you.



cc: U.S. Attorney for the Eastern District of New York Loretta Lynch
 December 3, 2014 letter signatories:
 Former U.S. Attorney for the Eastern District of New York Andrew Mahoney
 Former U.S. Attorney for the Eastern District of New York Zachery Carter
 Former U.S. Attorney for the Eastern District of New York Alan Vinegrad
 Former U.S. Attorney for the Eastern District of New York Benton Campbell
 U.S. Attorney for the Southern District of New York Preet Bharara
 U.S. Attorney for the Northern District of New York Richard Hartunian
 The Public & The Press

Second – truly transparent financial disclosure on the part of politicians and the beneficiaries of their largesse.

Third – a strong legal framework to allow the investigation and prosecution of corruption matters.

Fourth – a clear sentencing structure to enhance the deterrent effect.

Fifth – a commitment from all stakeholders – including but not limited to - law enforcement, the public, the media, and other public officials to report wrongdoing when they see it.

...
 We are committed to vigorously investigating and prosecuting public corruption using all the investigative tools at our disposal. We have a long history of using undercover agents, cooperating witnesses, wiretaps, and other audio and video recordings. We undertake extensive review of documents that may shed light on corrupt activities. We will continue to use these tools to root out bad actors and bring their crimes to light.

But we are not alone in this fight, not can we prosecute our way out of this problem. It is not just for prosecutors and law enforcement agents to ferret out wrongdoing. We all have a role to play in promoting transparency and accountability on the part of our public officials.

The public must demand more accountability and honest services.

The media must remain vigilant in its scrutiny.

Public officials who see wrongdoing must not turn a blind eye and let corruption continue.

...My office remains committed to the important work of rooting out corrupt public officials....

Public officials who have engaged in corruption have not only broken the law, they have broken faith with the public. Their actions siphon off taxpayer dollars, deprive citizens of vital services and destroy public trust in our political system...."



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY
NEW YORK, NY 10271

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

(212) 416-8050

March 13, 2015

Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

Honorable Harry Reid
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Mr. Leaders:

I write this letter to express support for the nomination of Loretta Lynch to become the Attorney General of the United States Department of Justice. As the Attorney General for the State of New York, I am confident that Ms. Lynch will provide the strong leadership necessary to fully enforce the law and defend the rights of Americans living in my state and across the nation.

During her tenure as the United States Attorney for the Eastern District of New York, Ms. Lynch has developed a long record of achievements, and she enjoys a reputation for fairly and even-handedly enforcing the law. She demonstrates extraordinary character, sound judgment and clear commitment to the principle of equal justice under law. Moreover, the breadth and range of her experience handling some of our nation's most challenging federal law enforcement matters, her commitment to public service and strong management skills, make her well-suited to serve in this position.

Our nation requires a capable and effective advocate like Loretta Lynch to head its chief law enforcement agency. For these reasons, I urge the Senate to confirm Ms. Lynch to serve as the Attorney General for the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric T. Schneiderman".

Eric T. Schneiderman

United States Senate Committee on the Judiciary

*Keeping Families Together: The President's Executive Action on Immigration
and the Need to Pass Comprehensive Reform*

Testimony of
Chief Charlie Beck
Los Angeles Police Department

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Thank you Senator Hirono, Chairman Leahy, Ranking Member Grassley, and distinguished members of the Judiciary Committee, including Senator Dianne Feinstein from the great state of California. I appreciate this opportunity to provide my testimony on this important topic.

My name is Charlie Beck and I am the 56th Chief of the Los Angeles Police Department where I have spent forty years of my life serving the communities of this nation's second largest city. I am proud of the work we have accomplished in Los Angeles building trust with each of our communities. This has been accomplished as result of focused and effective outreach with stakeholders to identify and address concerns. Our efforts, whether through regular forum meetings involving myself and stakeholders from our diverse communities, or in the day-to-day interaction with an officer on the beat, have proven that local law enforcement can hold the trust of its communities. However, over the years, immigration policies and federal programs, such as Secure Communities, have posed challenges to the trust established between the police and undocumented immigrants who fear that any interaction with the police will result in their removal.

I am here today to speak to the important matter of immigration reform and President Obama's recent action entitled, *Keeping Families Together: The President's Executive Action on Immigration and the Need to Pass Comprehensive Reform*. I speak on behalf of the Los Angeles Police Department as this matter before the Committee and the Congress is of significant importance to public safety in my city as well as cities and communities across this great nation.

The President's Immigration Accountability Executive Action has many elements including specific actions designed to improve our border security, implementing a new Priority Enforcement Program (PEP) focused on national security threats and serious criminals, and creating deferred action mechanisms for certain undocumented immigrants. My brief remarks will focus on the last two – replacement of the Secure Communities program with the PEP, and mechanisms to establish deferred action mechanisms for certain undocumented immigrants. This would include young people who have been in the United States (U.S.) at least five years or parents of U.S. citizens or legal permanent residents who have been in the country for more than five years.

I am encouraged by the President's announcement of Administration's plan to replace the existing Department of Homeland Security (DHS) Secure Communities program with the new Priority Enforcement Program. Over the course of the last five years, my Department has worked tirelessly with senior members of the DHS to refocus the enforcement priorities and other aspects of the Secure Communities program. Unfortunately, despite numerous changes to the program, many immigrants and others have lost faith in the program's stated purpose. Given the close association many made between the DHS Secure Communities program and local law enforcement, that loss of faith continues to undermine the immigrant community's relationship with the police working in their neighborhood.

With the announcement of the PEP and its stated focus, there exists the opportunity to repair the damage that has been done to local law enforcement's ability to garner the trust and cooperation of our immigrant communities.

However, to be clear, critical to the success of the newly announced PEP will be the makeup of those undocumented individuals identified by the DHS as the result of an arrest by local law enforcement and the PEP. Many in the immigrant community and elsewhere remain suspicious that the actual outcome of the new program will not substantially differ from the earlier Secure Communities program. Simply stated, too often in the past the DHS chose to focus on undocumented individuals who were recent entries charged with low-level criminal offenses. Should PEP focus its priority on those undocumented immigrants who pose a risk to national security or those charged with serious criminal offenses, there exists the opportunity to move forward in a much more productive manner.

Similarly, we support the President creating deferred action mechanisms for certain undocumented immigrants who pass a background check and young people who have been in the U.S. for at least five years and meet specific education and public safety criteria. For too long, these individuals have lived in the shadows of our communities fearing any misstep or involvement with law enforcement would result in their identification and removal. As members of this committee clearly understand, such circumstances pose significant risks. Many of these undocumented individuals have been and continue to be victimized and exploited by others in our community. Law enforcement is often unable to take action to stop this victimization as the undocumented immigrant and others fear stepping forward will result in their identification and removal. Additionally, criminal gangs and others intimidate whole communities with misinformation and innuendo that undocumented individuals who step forward to be a witness or testify will be deported and separated from their families. All of this creates and reinforces barriers to the trust needed between local law enforcement and our communities. The President's actions offer an opportunity for individuals who have proven themselves responsible to be given a deferred action and the ability to participate in their community without fear of being torn apart from their family.

In closing, I urge this committee to support intelligent, measured, and focused actions that allow local law enforcement to further build the trust of every member of the communities it serves. The President's actions, particularly to refocus the DHS on border security, national security threats and serious criminals, while also providing temporary relief for certain undocumented immigrants, are the kind of pragmatic steps needed at this critical time. The benefits gained for this group of undocumented immigrants will allow them to step out of the shadows and work with law enforcement for the safety of their communities and themselves. Thank you for the opportunity to address this with you. I will be pleased to respond in writing to any questions you may have.

**Breakdown of the Subsequent Convictions Associated with
Criminal Aliens Placed in a Non-Custodial Setting in Fiscal Year 2013**

The following table provides a breakdown of convictions associated with the 36,007 criminal aliens placed in a non-custodial setting in fiscal year 2013. The convictions occurred following release from ICE custody.

ALIEN	CONVICTION(S)
1	PETTY THEFT W/PR JAIL:SPEC OFFENSES PROBATION VIOL:REARREST/REVOKE
2	NO ARREST RECEIVED SEE COMMENT FOR CHARGE ¹
3	NO ARREST RECEIVED THEFT
4	POSSESS CONTROL SUBSTANCE FOR SALE TRANSPORT/ETC CONTROL SUBSTANCE
5	POSSESS CONTROLLED SUBSTANCE POSSESS CONTROLLED SUBSTANCE
6	TAKE VEH W/O OWN CONSENT/VEH THEFT
7	TRESPASSING
8	HALLUCINOGEN-MFR
9	POSSESS NARC CONTROL SUBSTANCE
10	INFLECT CORPORAL INJ SPOUSE/COHAB
11	NO ARREST RECEIVED SEE COMMENT FOR CHARGE NO ARREST RECEIVED VANDALISM NO ARREST RECEIVED SEE COMMENT FOR CHARGE
12	POSSESS CONTROLLED SUBSTANCE USE/UNDER INFL CONTRLD SUBSTANCE POSS ID OF 10+ PERSON W/INT
13	RESIDENTIAL BURGLARY POSSESSION OF BURGLARY TOOLS KNOWINGLY DAMAGE PROPERTY
14	POSSESS NARC CONTROL SUBSTANCE BURGLARY
15	LARCENY - LESS THAN \$200
16	BURGLARY:SECOND DEGREE
17	POSS/PURCHASE COCAINE BASE F/SALE PRCS:FLASH INCARCERATION
18	NO ARREST RECEIVED CHARGE NOT SPECIFIED
19	TRANSPORT/SELL NARC/CNTL SUB
20	DISORDERLY INTOX
21	INFLECT CORPORAL INJ SPOUSE/COHAB
22	VANDALISM

ALIEN	CONVICTION(S)
23	TRANSPORT/SELL NARC/CNTL SUB
24	RECKLESS DRIVING:PARKING FACILITY
25	POSSESS CONTROLLED SUBSTANCE
26	POSSESS NARC CONTROL SUBSTANCE
	TRANSPORT/SELL NARC/CNTL SUB
27	OBSTRUCTS/RESISTS PUBLIC OFFICER/ETC
28	POSSESS NARC CONTROL SUBSTANCE
29	SPEEDING DRIVING WITHOUT DRIVERS LICENSE / EXPIRED
30	VIO CS/DRUG/DEV AND COSMETIC ACT
	VIO CS/DRUG/DEV AND COSMETIC ACT
31	FORCE/ADW NOT FIREARM:GBI LIKELY
32	DISORDERLY INTOX RESISTING OFFICER
33	POSS/PURCHASE COCAINE BASE F/SALE
34	TRANSPORT/SELL NARC/CNTL SUB
35	BURGLARY
36	SELL/FURNISH/ETC MARIJUANA/HASH POSSESS MARIJUANA FOR SALE
37	TRANSPORT/SELL NARC/CNTL SUB
38	POSSESS CONTROLLED SUBSTANCE FAIL TO APPEAR:WRITTEN PROMISE
39	POSSESS NARC CONTROL SUBSTANCE
40	POST RELEASE COMMUNITY SUPV VIOLATION
41	CRIMINAL TRESPASS
42	FALSE ID TO SPECIFIC PEACE OFFICERS
43	POSSESS CONTROL SUBSTANCE FOR SALE TRANSPORT/ETC CONTROL SUBSTANCE VIOLATION OF PAROLE:FELONY
44	TAKE VEH W/O OWN CONSENT/VEH THEFT
45	POSSESS CONTROLLED SUBSTANCE PROBATION VIOL:REARREST/REVOKE
46	FAIL COMPLY REGISTR SEX OFENDR
47	BURGLARY
48	INFLECT CORPORAL INJ ON SPOUSE/COHAB VIOLATION OF PAROLE:FELONY
49	POSSESS CONTROLLED SUBSTANCE
50	ASSAULT
51	THREATEN CRIME WITH INTENT TO TERRORIZE
52	PETTY THEFT W/PR JAIL:SPEC OFFENSES
	POSSESS CONCENTRATED CANNABIS

ALIEN	CONVICTION(S)
53	VIOLATION OF PAROLE:FELONY
54	LOCAL ORDINANCE VIOLATION
55	POSSESSION CONTROLLED SUBSTANCE RECEIVE KNOWN STOLEN PROPERTY
56	BURGLARY RECEIVE/ETC KNOWN STOLEN PROPERTY OBSTRUCT/ETC PUBLIC OFFICER/ETC NO ARREST RECEIVED SEE COMMENT FOR CHARGE
57	BATTERY
58	TRANSPORT/ETC CONTROL SUBSTANCE
59	NONMOVING TRAFFIC VIOL
60	TRANSPORT/SELL NARC/CNTL SUB
61	GRAND THEFT:MONEY/LABOR/PROP
62	LARCENY
63	POSSESS STOLEN VEHICLE/VESSEL/ETC
64	NO ARREST RECEIVED FT/REG/ETC:FEL SEX OFF/PR : 13CRI726
65	CONSPIRACY TO TRANSPORT ILLEGAL ALIENS SRTV (TRANSPORTN OF ILLEGAL ALIEN, A/A
66	LARCENY
67	POSSESS NARC CONTROL SUBSTANCE THEFT
68	POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA
69	POSS OF FIREARMS AND AMMUNITION BY AN UNLAWFUL USER OF OR PERSON ADDICTED TO A C VIOLATION OF SUPERVISED RELEASE
70	GET CREDIT/ETC:USE OTHER'S ID
71	CONTEMPT:DISOBEY COURT ORDER/ETC BATTERY
72	POSSESS STOLEN VEHICLE/VESSEL/ETC
73	POSSESS CONTROL SUBSTANCE FOR SALE POSSESS CONTROL SUBSTANCE PARAPHERNA
74	POSSESS CONTROLLED SUBSTANCE
75	VIO CRT ORD TO PREVNT DOMESTC VIOL
76	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
77	POST RELEASE COMMUNITY SUPV VIOLATION POST RELEASE COMMUNITY SUPV VIOLATION NO ARREST RECEIVED SEE COMMENT FOR CHARGE
78	DUI:ALCOHOL/DRUGS

ALIEN	CONVICTION(S)
79	POSS MARIJUANA OVER 28.5 GRAMS POSSESS CONTROL SUBSTANCE PARAPHERNA POST RELEASE COMMUNITY SUPV VIOLATION
80	PROBATION VIOL:REARREST/REVOKE POSSESS/ETC BURGLARY TOOLS
81	THEFT
82	POSSESS NARC CONTROL SUBSTANCE USE/UNDER INFL CONTRLD SUBSTANCE
83	POSSESS CONTROLLED SUBSTANCE
84	POSSESS CONTROL SUBSTANCE FOR SALE OBSTRUCT/ETC PUBLIC OFFICER/ETC
	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
	OBSTRUCT/ETC PUBLIC OFFICER/ETC
85	DUI ALCOHOL/0.08 PERCENT
86	POSSESS NARC CONTROL SUBSTANCE POSSESS UNLAW PARAPHERNALIA
87	NO ARREST RECEIVED FAIL TO APPEAR AFTER WRITTEN PROMISE
	NO ARREST RECEIVED FAIL TO APPEAR AFTER WRITTEN PROMISE
	NO ARREST RECEIVED FAIL TO APPEAR AFTER WRITTEN PROMISE
	NO ARREST RECEIVED FAIL TO APPEAR AFTER WRITTEN PROMISE
	TRESPAS OBSTRUC/ETC BUSINES OPR/ETC
88	FELON/ADDICT POSS/ETC FIREARM FALSE ID TO SPECIFIC PEACE OFICERS
89	USE/UNDER INFL CONTRLD SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA DUI ALCOHOL/DRUGS HIT& RUN PROP DAMAG:LOC/ETC REQ POST RELEASE COMMUNITY SUPV VIOLATION
90	OBSTRUCT/ETC PUBLIC OFFICER/ETC
91	GRAND THEFT:AUTO TAKE VEH W/O OWN CONSENT/VEH THEFT HIT&RUN PROP DAMAG:LOC/ETC REQ OBSTRUCT/ETC PUBLIC OFFICER/ETC
92	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
93	CARRY CONCEALED DIRK OR DAGGER VIOLATION OF PAROLE:FELONY
	DUI ALCOHOL/DRUGS DUI ALCOHOL/0.08 PERCENT DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
	POSSESS CONTROLLED SUBSTANCE
94	PROHIBITED OWN/ETC AMMO/ETC VIOLATION OF PAROLE:FELONY
95	PETTY THEFT
	POSSESSION OF ID OF 10+ PRSN: W/ INT DEFRD

ALIEN	CONVICTION(S)
96	PETTY THEFT NO ARREST RECEIVED SEE COMMENT FOR CHARGE 666(A)-484(A)-488 PC
97	POSSESS STOLEN VEHICLE/VESSEL/ETC
98	POST RELEASE COMMUNITY SUPV VIOLATION
99	RECEIVE/ETC KNOWN STOLEN PROPERTY
100	POSSESS CONTROLLED SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA
101	POSSESS UNLAW PARAPHERNALIA
102	DRIVING W/LIC INV W/PREV CONV/SUSP/W/O FIN RES
103	FAIL TO ID FUGITIVE INTENT GIVE FALSE INFO
104	PETTY THEFT W/PR JAIL:SPEC OFFENSES
105	BURGLARY OBSTRUCT/ETC PUBLIC OFFICER/ETC POSSESS UNLAW PARAPHERNALIA
106	DAMAGE PROP-CRIM MISCH CONDIT RELEASE VIOLATION
107	CARRY CONCEALED DIRK OR DAGGER
108	POSSESS CONTROL SUBSTANCE PARAPHERNA PROBATION VIOL:REARREST/REVOKE POSSESS CONTROLLED SUBSTANCE
109	NO ARREST RECEIVED SEE COMMENT FOR CHARGE POSSESS NARC CONTROL SUBSTANCE POSSESS NARC CONTROL SUBSTANCE USE/UNDER INFL CONTRLD SUBSTANCE POSSESS UNLAW PARAPHERNALIA
110	NO ARREST RECEIVED UNSPECIFIED CHARGE
111	211-212,5(A) PC 459-460 (A) PC
112	DUI W/PRIOR CONV:PER 23550 VC
113	POSSESS CONTROLLED SUBSTANCE
114	CRIMINAL TRESPASS
115	BURGLARY THEFT BY FORGED/INVALID ACCESS CARD
116	RETAIL THEFT
117	TRESPAS OBSTRUC/ETC BUSINES OPR/ETC VANDALISM
118	NO ARREST RECEIVED GRAND THEFT:MONEY/LABOR/PROP SEE COMMENT FOR CHARGE
119	POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA

ALIEN	CONVICTION(S)
	POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA
120	PETTY THEFT W/PR JAIL:SPEC OFFENSES
121	POSSESS UNLAW PARAPHERNALIA
122	POSSESS STOLEN VEHICLE/VESSEL/ETC POSS W/INTENT TO USE VEH MASTER KEY
123	OBSTRUCT/RESIST EXECUTIVE OFFICER
124	NO ARREST RECEIVED FAIL TO APPEAR AFTER WRITTEN PROMISE NO ARREST RECEIVED UNSPECIFIED CHARGE
125	POSS MARIJUANA OVER 28.5 GRAMS PROBATION VIOL:REARREST/REVOKE
126	POSSESS CONTROLLED SUBSTANCE
127	OWN/ETC CHOP SHOP POSSESS STOLEN VEHICLE/VESSEL/ETC
128	TAKE VEH W/O OWN CONSENT/VEH THEFT RECEIVE/ETC KNOWN STOLEN PROPERTY POSSESS CONTROL SUBSTANCE PARAPHERNA
129	BURGLARY:SECOND DEGREE POSSESS UNLAW PARAPHERNALIA
130	THEFT/PETTY THEFT W/PRIOR PROBATION VIOL:REARREST/REVOKE NO ARREST RECEIVED POST RELEASE COMMUNITY SUPV VIOLATION NO ARREST RECEIVED POST RELEASE COMMUNITY SUPV VIOLATION
131	RECEIVE/ETC KNOWN STOLEN PROPERTY POST RELEASE COMMUNITY SUPV VIOLATION
132	CARRY CONCEALED DIRK OR DAGGER
133	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
134	EVADE PEACE OFFICER:CAUSE SBI/DEATH HIT AND RUN:DEATH OR INJURY BURGLARY
135	ASSAULT ON PERSON BATTERY
136	GRAND THEFT: MONEY/LABOR/PROP
137	NO ARREST RECEIVED TAKE VEH W/O OWN CONSENT/VEH THEFT POSSESS STOLEN VEHICLE/VESSEL/ETC NO ARREST RECEIVED UNSPECIFIED CHARGE DUI DRUG FALSE ID TO PEACE OFFICER
138	INDECENT EXPOSURE VIOLATION OF PAROLE:FELONY
139	PETTY THEFT
140	CONTEMPT:VIOL PROTECTIVE ORD/ETC
141	POSSESS CONTROLLED SUBSTANCE
142	DUI ALCOHOL/DRUGS
143	REGISTRATION OF PREDATORY OFFENDERS PREDATORY OFFENDER-KNOWINGLY VIOLATES REGISTRATION

ALIEN	CONVICTION(S)
144	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
145	HARM/DEATH:ELDER/DEPENDANT ADULT CONTEMPT:VIOL PROTECTIVE ORD/ETC
	ROBBERY BURGLARY PROBATION VIOL:REARREST/REVOKE CRUELTY TO ELDER/DEPENDENT ADULT CONTEMPT:VIOL PROTECTIVE ORD/ETC FORCE/ADW NOT FIREARM:GBI LIKELY
146	POSSESS CONTROL SUBSTANCE PARAPHERNA POST RELEASE COMMUNITY SUPV VIOLATION
	NO ARREST RECEIVED THEFT
147	THEFT-CONTROL PROPERTY
148	INFLECT CORPORAL INJ SPOUSE/COHAB
	DUI ALCOHOL/DRUGS
149	BATTERY
150	POSSESS NARC CONTROL SUBSTANCE
	POSSESS NARC CONTROL SUBSTANCE POST RELEASE COMMUNITY SUPV VIOLATION
151	SRV (ILLEGAL RE-ENTERED THE U.S. FND IN CENTRAL CA)
152	LARCENY
153	BATTERY
154	RECEIVE/ETC KNOWN STOLEN PROPERTY POSSESS NARC CONTROL SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA
155	INDECENT EXPOSURE
156	BURGLARY
157	BATTERY
158	EMER COMM 911 MISUSE
159	EVADE PEACE OFFICER:DISREGARD SAFETY
160	PETTY THEFT
161	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
162	POSSESS CONTROLLED SUBSTANCE
163	OPERATING WITHOUT A LICENSE ON PERSON
	CONTROLLED SUBSTANCE-POSSESS (COCAINE, HEROIN
164	FIGHT/NOISE/OFFENSIVE WORDS
	BURGLARY
165	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
166	POSSESS NARC CONTROL SUBSTANCE POSSESS CONTROLLED SUBSTANCE
	NO ARREST RECEIVED SEE COMMENT FOR CHARGE

ALIEN	CONVICTION(S)
167	EXTREME DUI-BAC > .20
168	DRIVE WHILE LIC SUSPEND/ETC
	TAKE VEH W/O OWN CONSENT/VEH THEFT
	POSSESS CONTROLLED SUBSTANCE
169	TRANSPORT/SELL NARC/CNTL SUB
170	NO ARREST RECEIVED DISORDERLY CONDUCT:INTOX DRUG/ALCOH
171	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
172	USE/UNDER INFLUENCE CONTROL SUBST
173	DUI ALCOHOL/DRUGS DUI ALCOHOL/0.08 PERCENT
174	DUI ALCOHOL/DRUGS
175	POSSESS CONTROLLED SUBSTANCE
	POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA
176	NO ARREST RECEIVED DRIVE W/O LICENSE
177	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
178	DRIVING WHILE LICENSE SUSPENDED OR REVOKED (MISDEMEANOR)
	WILLFUL OBSTRUCTION OF LAW ENFORCEMENT OFFICERS - MISDEMEANOR
	FAILURE TO APPEAR FOR FINGERPRINTABLE CHARGE - MISDEMEANOR
179	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
180	POSSESS CONTROLLED SUBSTANCE USE/UNDER INFL CONTRLD SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA
181	ASSAULT ON PERSON BATTERY
	NONSTUDENT REFUSE TO LEAVE CAMPUS
	BATTERY ON PERSON
182	DRIVE WHILE LIC SUSPEND/ETC
183	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
184	GET CREDIT/ETC:USE OTHER
	GET CREDIT/ETC:USE OTHER
185	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
186	12500(A) VC
	POSSESS NARC CONTROL SUBSTANCE
	BURGLARY
187	THEFT PROP>=\$500 < \$1500
188	III/BURGLARY 3RD DEG-UNLAW ENTRY,FEL
189	DISORDERLY CONDUCT
	RESISTING OFFICER

ALIEN	CONVICTION(S)
	BATTERY LARCENY
190	BURGLARY
191	DUI ALCOHOL/0.08 PERCENT DUI ALCOHOL/DRUGS
192	MANUFAC/POSS/DELIVER SCH I/II POSSESSION OF SCHEDULE I-V CONTROLLED SUBSTANCE CONSPIRACY MAN/DEL/POSS/ W/INT/ SCH I/II
193	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
194	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
195	DUI ALCOHOL/DRUGS
	VIOLATION OF PAROLE:FELONY
196	NO ARREST RECEIVED UNSPECIFIED CHARGE POSSESS UNLAW PARAPHERNALIA
197	NO ARREST RECEIVED SEE COMMENT FOR CHARGE TAKE VEH W/O OWN CONSENT/VEH THEFT
198	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
199	CONTRACTING W/O A LICENSE
	CONTEMPT:VIOL GANG INJUNCTION
200	CONTEMPT:VIOL GANG INJUNCTION
	DISORDERLY CONDUCT TRAFFIC-DL-DRIVING AFTER CANCELLATION-INIMICAL TO PUBLIC SAFETY
201	TRAFFIC-DL-DRIVING AFTER CANCELLATION-INIMICAL TO
202	BURGLARY
203	UNLAWFUL CARRYING WEAPON
204	TRAFFIC - DWI - OPERATE MOTOR VEHICLE UNDER DRIVING WHILE IMPAIRED.
205	POSSESS CONTROLLED SUBSTANCE
	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
206	VANDALISM USE/UNDER INFL CONTRLD SUBSTANCE
207	MAKE/PASS FICTITIOUS CHECK
208	TERRORISTIC THREATS
209	BATTERY
210	RESISTING OFFICER
211	PETTY THEFT RETAIL MERCHANDISE
	SEXUAL BATTERY
212	CHRG 422(A) PC
213	CONTEMPT:DISOBEY COURT ORDER/ETC LOCAL ORDINANCE VIOLATION FAIL TO APPEAR AFTER WRITTEN PROMISE

ALIEN	CONVICTION(S)
	CONTEMPT:DISOBEY COURT ORDER/ETC LOCAL ORDINANCE VIOLATION FAIL TO APPEAR AFTER WRITTEN PROMISE
	USE/UNDER INFLUENCE CONTROL SUBST
	USE/UNDER INFLUENCE CONTROL SUBST
	CONTEMPT:DISOBEY COURT ORDER/ETC
214	POSSESS CONCENTRATED CANNABIS
215	TAKE VEH W/O OWN CONSENT/VEH THEFT EVADE PEACE OFCR:DISREGARD SAFETY GRAND THEFT:AUTO RECEIVE/ETC KNOWN STOLEN PROPERTY ILLEGAL ENTRY
216	TAKE VEH W/O OWN CONSENT/VEH THEFT
217	BURGLARY: SECOND DEGREE GET CREDIT/ETC:USE OTHER
218	FIGHT/NOISE/OFFENSIVE WORDS
219	RETAIL FRAUD - THIRD DEGREE
220	DOM BATTERY, 3+
	DRIVE WHILE LIC SUSPEND/ETC
221	GET CREDIT/ETC:USE OTHER&APOS;S ID PROBATION VIOL:REARREST/REVOKE
222	LARCENY
223	COERC W/FORCE OR THREAT OF FORCE DESTROY PROP OF ANOTHER, \$250 - \$5K GROSS MISD
224	LARCENY
	RECEIVE/ETC KNOWN STOLEN PROPERTY
225	POSSESS CONTROLLED SUBSTANCE
	POSSESS CONTROL SUBSTANCE FOR SALE POSSESS CONTROLLED SUBSTANCE
	POSSESS CONTROLLED SUBSTANCE
226	INFLECT CORPORAL INJ SPOUSE/COHAB
227	CHRG I415 (2) PC
228	BURGLARY TAKE VEH W/O OWN CONSENT/VEH THEFT OBSTRUCTS/RESISTS PUBLIC OFFICER/ETC
229	NO ARREST RECEIVED SEE COMMENT FOR CHARGE PETTY THEFT W/PR JAIL:SPEC OFFENSES VIOLATION OF PAROLE:FELONY
230	DRUGS - EQUIP - POSSESS DUI-UNLAW BLD ALCH
231	NO ARREST RECEIVED POSSESS CONTROLLED SUBSTANCE
232	TAKE VEH W/O OWN CONSENT/VEH THEFT RECEIVE/ECT KNOWN STOLEN PROPERTY GET CREDIT/ETC:USE OTHER POSS DRIVER LIC/ID TO COMMIT FORGERY

ALIEN	CONVICTION(S)
233	FORGE OFFICIAL SEAL
234	DUI ALCOHOL/0.08 PERCENT DRIVE: LIC SUSP/ETC:DUI:SPEC VOIL DRIVE WHILE LIC SUSPEND/ETC DUI ALCOHOL/DRUGS
235	DRIVE W/O LICENSE
236	CRIMINAL TRESPASS CRIMINAL TRESPASS
237	ASSAULT CAUSES BODILY INJ
238	FORGE ACCESS CARD TO DEFRAUD FELON/ADDICT POSS/ETC FIREARM GET CREDIT/ETC:USE OTHER'S ID FORGE OFFICIAL SEAL
239	CARRY CONCEALED DIRK OR DAGGER OBSTRUCT/ETC PUBLIC OFFICER/ETC POST RELEASE COMMUNITY SUPV VIOLATION
240	FELON/ADDICT POSS/ETC FIREARM
241	POSSESS CONTROLLED SUBSTANCE
242	USE/UNDER INFL CONTRLD SUBSTANCE
243	NO ARREST RECEIVED DRIVE W/O LICENSE
244	RECKLESS DRIVING
245	POSSESS NARC CONTROL SUBSTANCE PETTY THEFT W/PR JAIL:SPEC OFFENSES
246	SEE COMMENT FOR CHARGE
247	BURGLARY:SECOND DEGREE
248	USE ACCESS ACCOUNT INFO W/O CONSENT
249	SELL HYPO NEEDLE/SYRINGE W/O PERMIT PROBATION VIOL:REARREST/REVOKE
250	VIOLATION OF PAROLE:FELONY
251	DUI ALCOHOL/0.08 PERCENT
252	SEE COMMENT FOR CHARGE
253	GRAND THEFT: MONEY/LABOR/PROP
254	TAKE VEH W/O OWN CONSENT/VEH THEFT
255	DUI ALCOHOL/DRUGS
256	POSSESS CNTL SUBSTANCE
257	OBSTRUCTS/RESISTS PUBLIC OFFICER/ETC VIOLATION OF PAROLE:FELONY
258	AUTO THEFT W/PRIOR
259	TAKE VEH W/O OWN CONSENT/VEH THEFT
260	POSSESS NARC CONTROL SUBSTANCE POSSESS NARC CONTROL SUBSTANCE

ALIEN	CONVICTION(S)
	POSSESS NARC CONTROL SUBSTANCE FAIL TO APPEAR AFTER WRITTEN PROMISE
261	POSSESS NARC CONTROL SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA POSSESS NARC CONTROL SUBSTANCE
262	MARIJUANA-POSSESS/USE
263	FALSE ID TO SPECIFIC PEACE OFICERS NO ARREST RECEIVED POSSESS UNLAW PARAPHERNALIA NO ARREST RECEIVED SEE COMMENT FOR CHARGE BURGLARY
264	ILLEGAL ENTRY
265	POSS/PURCHASE FOR SALE NARC/CNTL SUB
266	TRAFFIC OFFENSE
267	DUI ALCOHOL/0.08 PERCENT
268	FLEE/ELUDE POLICE
269	POSSESS MARIJUANA FOR SALE PLANT/CULTIVATE/ETC MARIJUANA/HASH
270	NO ARREST RECEIVED INFLICT CORPORAL INJ:SPOUSE/COHAB NO ARREST RECEIVED THREATEN CRIME W/INTENT TO TERRORIZE
271	BURGLARY
272	POSSESS NARC CONTROL SUBSTANCE
273	DUTY TO STOP-ACC.RESULT- DAMG.TO ATT.VEHICLE DRIVING AFTER DENIAL, SUS/REVOCAION-LICENSE
274	BATTERY
275	CHRG 3455 PC
276	POSSESS UNLAW PARAPHERNALIA BURGLARY PROBATION VIOL:REARREST/REVOKE BURGLARY BURGLARY:SECOND DEGREE
277	TAKE VEH W/O OWN CONSENT/VEH THEFT
278	SIMPLE ASSAULT
279	DISORDERLY CONDUCT:INTOX DRUG/ALCOH
280	SHOPLIFTING-REMOVAL OF GOODS SHOPLIFTING-CONCEALMENT VIOLATION OF PROMISE TO APPEAR
281	DRIVE WHILE LIC SUPSEND/ETC RECKLESS DRIVING
282	TRESPASS:INJURE PROPERTY TRANSPORT/SELL NARC/CNTL SUB TRANSPORT/SELL NARC/CNTL SUB
283	LARCENY

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ALIEN	CONVICTION(S)
284	LARCENY
285	8 USC 1324 ALIEN SMUGGLING
286	POSSESS CONTROLLED SUBSTANCE
	BURGLARY PETTY THEFT W/PR JAIL:SPEC OFFENSES
287	POSS/PURCHASE COCAINE BASE F/SALE
288	VIOL DOM VIOLENCE TPO
289	BURGLARY LARCENY DAMAGE PROP-CRIM MISCH
290	POSS SCH I, II, III, IV C/S, (1ST/2ND)
291	DUI ALCOHOL/0.08 PERCENT
292	ONE COUNT OF 18 USC 111(A)(1)-MISDEMEANOR
293	BAIL JUMPING-FELONY
294	SHOPLIFTING CONTRIB DELINQ/DEPEND OF MINOR
295	FELONY PROSTITUTION
296	POSSESS CONTROLLED SUBSTANCE
297	DRIVE W/O LICENSE
298	CRIM TRESP 3RD DEG/PROPERTY
	DANGEROUS DRUG-POSS/USE
299	CONTRIBUTE DELINQUENCY OF MINOR
300	UNLAWFUL USE/ETC:DRIVER LIC
301	DISORDERLY CONDUCT:INTOX DRUG/ALCOH
302	DRIVE: LIC SUS/ETC; DUI/RFUSE TST
303	NO ARREST RECEIVED DRIVE W/O LICENSE
304	POSSESS CONTROLLED SUBSTANCE
305	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
306	THEFT
	ROBBERY
307	USE/UNDER INFL CONTRLD SUBSTANCE
	OBSTRUCTS/RESISTS PUBLIC OFFICER/ETC
308	ASSAULT
309	BURGLARY RECEIVE/ETC KNOWN STOLEN PROPERTY
310	INFRACTION VIOLATION
311	DRIVE W/O LICENSE
312	BURGLARY BATTERY
313	FALSE ID TO SPECIFIC PEACE OFFICERS
314	DUI ALCOHOL/0.08 PERCENT
315	CONTEMPT:DISOBEY COURT ORDER/ETC USE/UNDER INFL CONTRLD SUBSTANCE

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ALIEN	CONVICTION(S)
	USE/UNDER INFLUENCE CONTROL SUBST CONTEMPT; DISOBEY COURT ORDER/ETC
316	POSSESS CONTROLLED SUBSTANCE
317	CHRG 422 (A) PC
318	POSSESS CONTROLLED SUBSTANCE
319	DUI/ALCOHOL/0.08 PERCENT
320	FALSE PRETENSES - \$200 OR MORE BUT LESS THAN
321	DUI ALCOHOL/0.08 PERCENT
322	ROBBERY WITH DANGEROUS WEAPON RECEIVE STOLEN GOODS/PROP (F)
323	BATTERY
324	SEX BATT:TOUCH FOR SEX AROUSAL
325	RECEIVE/ETC KNOWN STOLEN PROPERTY
326	THEFT CHRG 484 (A)-488 PC NO ARREST RECEIVED SEE COMMENT FOR CHARGE
327	POSSESS STOLEN VEHICLE/VESSEL/ETC
328	ENTER/ETC NONCOMMERCIAL DWELLING
329	BURGLARY BURGLARY
330	BURGLARY
331	AGG DUI-LIC SUSP/REV FOR DUI
332	RAPE SPOUSE BY FORCE/FEAR/ETC
333	POSSESS NARC CONTROL SUBSTANCE
334	OBSTRUCTS/RESISTS PUBLIC OFFICER/ETC CARRY CONCEALED DIRK OR DAGGER CARRY CONCEALED DIRK OR DAGGER
335	VIO CS/DRUG/DEV AND COSMETIC ACT
336	BURGLARY:FIRST DEGREE THEFT PERSONAL PROP/PETTY THEFT FALSE ID TO SPECIFIC PEACE OFFICERS
337	CONSPIRACY TO HARBOR ALIENS WITHIN THE U.S.
338	POSSESS CONTROLLED SUBSTANCE
339	THEFT
340	DUI/ALCOHOL/0.08 PERCENT
341	POSSESS CONTROLLED SUBSTANCE DRIVE W/O LICENSE FALSE ID TO SPECIFIC PEACE OFFICERS
342	DUI ALCOHOL/0.08 PERCENT
343	UNAUTHORIZED PRESENTMENT OF CARD

ALIEN	CONVICTION(S)
344	CONTEMPT:VIOL GANG INJUNCTION FAIL TO APPEAR AFTER WRITTEN PROMISE
	CHRG 459-460 (A) PC FIRST DEGREE OBSTRUCT/ETC PUBLIC OFFICER/ETC
345	TRESPAS OBSTRUC/ETC BUSINES OPR/ETC
346	DISORDERLY CONDUCT: INTOX DRUG/ALCOH
	BATTERY ON PERSON
347	DRIVE W/O LICENSE USE/UNDER INFL CONTRLD SUBSTANCE
348	LARCENY
349	LARCENY 6
	LARCENY 5
350	DRUG PARAPHERNALIA-POSSESS/USE
	DRUG PARAPHERNALIA-POSSESS/USE RESIST ARREST -PASSV RESISTANCE
351	FINANCIAL TRANSACTION CARD FRAUD-USE-NO CONSENT
352	DISORDERLY CONDUCT ASSAULT-5TH DEGREE-FEAR OF BODILY HARM OR DEATH
	ASSAULT-5TH DEGREE-FEAR OF BODILY HARM OR DEATH
353	DRIVING WHILE LICENSE SUSPENDED OR REVOKED (MISDEMEANOR)
354	DRIVING WHILE INTOXICATED 2ND
355	POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA
	POSSESS UNLAW PARAPHERNALIA
356	POSSESS NARC CONTROL SUBSTANCE
357	FRAUD LARCENY
358	RESID MORTGAGE FRAUD
359	ROBBERY
360	BURGLARY PAROLE VIOL-FLASH INCARCERATION
	NO ARREST RECEIVED PAROLE VIOL-FLASH INCARCERATION
361	SHOPLIFTING-REMOVAL OF GOODS CRIMINAL TRESPASS 2ND DEGREE ASSAULT-TOUCHED TO INJURE
	CRIM TRESP 3RD DEG/PROPERTY
	SHOPLIFTING-REMOVAL OF GOODS
362	CRIMINAL TRESPASS 2ND DEG
	POSSESSION OF FIREARM BY FELON ASSAULT WITH A DEADLY WEAPON
363	TRAFFIC - DWI - FOURTH-DEGREE DRIVING WHILE ASSAULT IN THE 5TH DEG
	FINANCIAL TRANSACTION CARD FRAUD-USE-NO CONSENT

ALIEN	CONVICTION(S)
	FINANCIAL TRANSACTION CARD FRAUD-USE-NO CONSENT DRUGS - 5TH DEGREE - POSSESS SCHEDULE 1,2,3,4 -
364	SIMPLE ROBBERY
	THEFT-TAKE/USE/TRANSFER MOVABLE PROP-NO CONSENT
365	DUI ALCOHOL/DRUGS
366	CHRG 490,1 PC
367	FAIL PROVE FIN RSP: PO REQUEST
368	LOITER:INTENT:PROSTITUTION FAIL TO APPEAR AFTER WRITTEN PROMISE
	LOITER:INTENT:PROSTITUTION
	LOITER:INTENT:PROSTITUTION FAIL TO APPEAR AFTER WRITTEN PROMISE
369	MOVING TRAFFIC VIOL REFUSAL TO SUBMIT TO BREATH/BLOOD/OR URINE TEST DRIVING WHILE LIC SUSP 1ST OFF
370	FALSE IMPRISONMENT/INFLICT CORPORAL INJ SPOUSE/COHAB
371	SHOPLIFT-LESS PURCHASE PRICE
372	DRIVE W/O LICENSE DUI ALCOHOL/DRUGS
373	BATTERY ON PERSON
374	DRIVE W/LIC SUSP/REVOKE/CANC
375	PROSTITUTION-PATRON-HIRES, OFFERS, OR AGREES TO
376	FRAUD TO OBTAIN AID
377	POSS WPN BY PROHIB PERSON
378	FAIL REGISTER SEX OFFENDER(F) INDECENT LIBERTY WITH CHILD
379	NO ARREST RECEIVED DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
380	HIT AND RUN:PROPERTY DAMAGE DUI ALCOHOL/0.08 PERCENT
381	LARCENY BURGLARY
382	POSSESS CONTROLLED SUBSTANCE
383	VANDALISM
384	FLEEING A PEACE OFFICER BY A MEANS OTHER THAN A
385	DRIVE: UNDER INFLUENCE ALCOHOL
386	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
387	BATTERY ON PERSON
388	EXTREME DUI-BAC > .20
389	DUI ALCOHOL/DRUGS DUI ALCOHOL/0.08 PERCENT DRIVE W/O LICENSE
390	THEFT
	BURGLARY
391	FAIL TO COMPLY-COURT ORDER FAIL TO STAY/ACCID/ATTEND VEH

ALIEN	CONVICTION(S)
392	POSSESS STOLEN VEHICLE/VESSEL/ETC TAKE VEH W/O OWN CONSENT/VEH THEFT
393	DRIVE W.O LICENSE
394	DRIVE W/LIC SUSP/REVOKE/CANC
395	BRAWLING FIGHTING CORRUPT PUBLIC MORAL DECENY
396	CARRY CONCEALED DIRK AND DAGGER USE/UNDER INFL CONTRLD SUBSTANCE
	USE/UNDER INFL CONTRLD SUBSTANCE DEPORTATION PROCEEDINGS
397	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
398	USE/UNDER INFL CONTRLD SUBSTANCE POSSESS CONTROLLED SUBSTANCE
399	TRAFFIC OFFENSE MOVING TRAFFIC VIOL
400	ROBBERY
401	POSSESS CONTROLLED SUBSTANCE PROBATION VIOL:REARREST/REVOKE USE/UNDER INFL CONTRLD SUBSTANCE
402	BURGLARY MISUSE OF 911 OR E911 SYSTEM
403	RETAIL THEFT/DISP MERCH/<\$300
404	VIO CS/DRUG/DEV AND COSMETIC ACT
405	NO ARREST RECEIVED FAIL TO APPEAR AFTER WRITTEN PROMISE
406	DRIVING AFTER DENIAL, SUS/REVOCATION-LICENSE FAILURE TO APPEAR/ANSWER SUMMONS
407	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
408	DISORDERLY CONDUCT:PROSTITUTION
409	NONMOVING TRAFFIC VIOL
410	SX OFF FAIL ANNUAL UPDATE
411	III/DANGEROUS DRUG-POSS/USE CHANGED TO DANGEROUS DRUG VIOLATION,FEL
412	DISORDERLY CONDUCT:INTOX DRUG/ALCOH OBSTRUCT/ETC PUBLIC OFFICER/ETC
	TRESPASSING
413	FIGHT/CHALLENGE FIGHT
	NO ARREST RECEIVED THEFT/PETTY THEFT
	NO ARREST RECEIVED THEFT/PETTY THEFT
414	DUI ALCOHOL/DRUGS
415	DUI ALCOHOL/0.08 PERCENT DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
416	DISORDERLY CONDUCT:INTOX DRUG/ALCOH POSSESS CONTROL SUBSTANCE FOR SALE RECEIVE/ETC KNOWN STOLEN PROPERTY
417	PETTY THEFT RETAIL MERCHANDISE/ETC

ALIEN	CONVICTION(S)
418	TRANSPORT/ETC CNTL SUB
419	UNLAWFUL USE/ETC:DRIVER LIC
420	VANDALISM FAIL TO APPEAR AFTER WRITTEN PROMISE BATTERY
421	THREATEN CRIME WITH INTENT TO TERRORIZE CRIM STREET GANG:W/PUB OFF CONV
422	INFRACTION
423	POSSESS CONTROLLED SUBSTANCE
424	POSSESS CONTROLLED SUBSTANCE FAIL TO APPEAR:WRITTEN PROMISE
425	DOM BATTERY, 1ST
426	SEE COMMENT FOR CHARGE
427	POSSESS CONTROLLED SUBSTANCE
428	TRESPASS:RAILROAD PROPERTY
429	DUI ALCOHOL/0.08 PERCENT DUI ALCOHOL/DRUGS
430	BAT:SPOUSE/EX SP/DATE/ETC
431	DUI ALCOHOL/DRUGS
432	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
433	NO ARREST RECEIVED DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
434	NONMOVING TRAFFIC VIOL NONMOVING TRAFFIC VIOL
435	FAIL DISCLOSE ORIGIN RECORDING
436	FALSE IDENT TO LAW ENFORCEMENT CRIMINAL TRESPASS CRIMINAL TRESPASS
437	RETAIL THEFT
438	ROBBERY
439	LOCAL ORDINANCE VIOLATION
440	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
441	CHILD CRUELTY:POS INJURY/DEATH
442	ASSAULT
443	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
444	TRAN FAIL 30 DAY UPDATE
445	CONTEMPT:DISOBEY COURT ORDER/ETC
446	RETAIL THEFT - INTENTIONALLY TAKE
447	NO ARREST RECEIVED SEE COMMENT FOR CHARGE THEFT
448	BURGLARY

ALIEN	CONVICTION(S)
449	ASSAULT-5TH-SAME VICTIM-TWO OR MORE PREVIOUS ASSAULT IN THE FIFTH DEGREE; GROSS MISDEMEANOR-
450	ROBBERY
451	FRAUD
452	MOVING TRAFFIC VIOL MOVING TRAFFIC VIOL
453	DUI-UNLAW BLD ALCH
454	NO ARREST RECEIVED DISORDERLY CONDUCT:INTOX DRUG/ALCOH
455	HIT AND RUN:PROPERTY DAMAGE DRIVE:SUSPENDED/ETC LIC:RECKLESS DRIVE:LIC SUS/ETC:DUI/RFUSE TST DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
456	LARCENY 6
457	PETTY THEFT
458	TAKE VEH W/O OWN CONSENT/VEH THEFT
459	CONSPIRACY:COMMIT CRIME RECEIVE/ETC KNOWN STOLEN PROPERTY
460	NO ARREST RECEIVED ENTER/REMAIN ON POSTED PROPERTY
461	POSSESS CONTROLLED SUBSTANCE
462	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
463	SEE COMMENT FOR CHARGE
464	SEE COMMENT FOR CHARGE
465	POSSESS CONTROLLED SUBSTANCE
466	OBSTRUCT/ETC PUBLIC OFFICER/ETC FAIL TO APPEAR AFTER WRITTEN PROMISE
467	POSSESS CONTROLLED SUBSTANCE
468	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
469	NO ARREST RECEIVED DRIVE W/O LICENSE
470	POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA
471	BRING CONTROL SUB/ETC INTO PRISON/ETC POSSESS CONTROLLED SUBSTANCE
472	LOITER:INTENT:PROSTITUTION
473	DISTURBS BY LOUD/UNREASONABLE NOISE
474	DUI ALCOHOL/DRUGS DUI ALCOHOL/0.08 PERCENT
475	DUI ALCOHOL/DRUGS
476	POSSESS CONTROLLED SUBSTANCE USE/UNDER INFL CONTRLD SUBSTANCE

ALIEN	CONVICTION(S)
477	TRANSPORT/ETC CONTROL SUBSTANCE
478	DUI ALCOHOL/DRUGS
479	8 USC 1325-ILLEGAL ENTRY (M)
480	NO ARREST RECEIVED DRIVE W/O LICENSE
	RECEIVE/ETC KNOWN STOLEN PROPERTY
	BURGLARY CONSPIRACY:COMMIT CRIME POSSESS/ETC BURGLARY TOOLS
481	8 USC 1325 ILLEGAL ENTRY (M)
482	NO ARREST RECEIVED SEE COMMENT FOR CHARGE PARTICIPATE:CRIMINAL STREET GANG
483	DRIVE WHILE LIC SUSPEND/ETC
484	POSSESS NARC CONTROL SUBSTANCE
485	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
486	POSSESS CONCENTRATED CANNABIS OBSTRUCT/ETC PUBLIC OFFICER/ETC DESTROY/CONCEAL EVIDENCE
	CHILD CRUELTY:POS INJURY/DEATH
487	INFLICT CORPORAL INJ SPOUSE/COHAB
	BAT:SPOUSE/EX SP/DATE/ETC VIO CRT ORD TO PREVNT DOMESTC VIOL
488	INFLICT CORPORAL INJ SPOUSE/COHAB
489	BAT:SPOUSE/EX SP/DATE/ETC
490	PROBATION VIOLATION REFERENCE OBT 4804060529
491	DRUG PARAPHERNALIA-POSSESS/USE
492	DISORDERLY CONDUCT:INTOX DRUG/ALCOH FAIL TO APPEAR AFTER WRITTEN PROMISE
	DISORDERLY CONDUCT:INTOX DRUG/ALCOH
	SEE COMMENT FOR CHARGE
	ARSON:PROPERTY
493	DUI .08 ALCOHOL:CAUSE BODILY INJ
494	DUI - FIRST OFFENSE DUI MOTOR VEHICLE VIOLATION - NO LICENSE FAILURE OF OWNER OR OPERATOR OF MOTOR VEHICLE
495	RESISTING PUBLIC OFFICER
496	ATTEMPTED COMMON LAW ROBBERY
	COMMON LAW ROBBERY
	COMMON LAW ROBBERY
497	OPERATING WHILE REVOKED
	OPERATE W/O CARRYING LICENSE
	OPERATING WHILE REVOKED

ALIEN	CONVICTION(S)
498	HIT AND RUN: PROPERTY DAMAGE
499	BURGLARY
	POSSESS CONTROL SUBSTANCE PARAPHERNA
	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
	RECEIVE/ETC KNOWN STOLEN PROPERTY
500	THEFT - MOTOR VEHICLE DEFINED THEFT-TAKE/DRIVE MOTOR VEHICLE-NO OWNER CONSENT
501	AGGRAVATED ASSAULT CRIMINAL DAMAGE
502	8 USC 1325A1 IMPROPER ENTRY OF ALIEN; CONCEALMENT OF FACTS; MARRIAGE FRAUD
503	PROBATION VIOLATION REFERENCE OBT 1102045384
504	MARIJUANA-POSSESS
	MARIJUANA-POSSESS
505	NO ARREST RECEIVED DRIVE W/O LICENSE
506	PETTY THEFT
507	BURGLARY
508	OBSTRUCTION-REFUSE TRUE NAME
509	GRAND THEFT:AUTO
510	POSSESS CONTROLLED SUBSTANCE
511	FRAUD PASS FORGED
512	LOUD/UNREASONABLE NOISE
513	PROBATION VIOLATION
	PROBATION VIOLATION REFERENCE OBT 1101092442 PROBATION VIOLATION REFERENCE OBT 1101094288
514	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
515	LARCENY
516	BATTERY
517	TRESPASSING/ CRIMINAL POSSESSION STOLEN PROPERTY-5TH DEGREE
518	POSSESS NARC CONTROL SUBSTANCE
519	DRUGS-POSSESS MARIJUANA-POSSESS DRUGS - EQUIP - POSSESS
520	POSSESSION OF BURGLARY OR THEFT TOOLS
521	DRIVING W/O LICENSE
522	CRIMINAL TRESPASS
523	DISORDERLY CONDUCT
	TRAFFIC - DWI - OPERATE MOTOR VEHICLE - ALCOHOL
524	DUI OF ALCOHOL OR CONTRL SUBST

ALIEN	CONVICTION(S)
525	BURGLARY
526	DUI ALCOHOL/0.08 PERCENT
527	CRIMINAL TRESPASS-BLDG AND OCCUP
528	VIO CRT ORD TO PREVNT DOMESTC VIOL
529	DUI ALCOHOL/DRUGS
530	FRAUD-ILLEG USE CREDIT CARDS FRAUD-IMPERSON
531	POSSESS UNLAW PARAPHERNALIA
532	DRIVE W/LIC SUSP/REVOKE/CANC
	DRIVE W/LIC SUSP/REVOKE/CANC
533	THEFT PROP>=\$50 < \$500
534	INFLICT CORPORAL INJ ON SPOUSE/COHAB
535	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
536	NO ARREST RECEIVED DUI W/PRIOR CONV:PER 23550 VC DUI 0.08%W/PRS:PER 23550VC AIDE/ABET IN EXHIBITION OF SPEED DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL RECKLESS DRIVING:HIGHWAY
537	FORCE/ADW NOT FIREARM:GBI LIKELY
	USE/UNDER INFL CONTRLD SUBSTANCE
538	POSSESS CONTROLLED SUBSTANCE
539	NO ARREST RECEIVED DRIVE W/O LICENSE
	NO ARREST RECEIVED DRIVE W/O LICENSE
	ASSAULT ON PERSON BATTERY
540	TAKE VEH W/O OWN CONSENT/VEH THEFT
541	BATTERY
542	USE/UNDER INFL CONTRLD SUBSTANCE
543	EMBEZZLEMENT
544	DWI - LEVEL/ NO OPERATORS LICENSE
545	ASSAULT CAUSES BODILY INJ POSS CS PG 1 < 1G
546	8 USC 1325 ILLEGAL ENTRY (M)
547	8 USC 1325-ILLEGAL ENTRY
548	FALSE ID TO SPECIFIC PEACE OFICERS
549	BATTERY
	TAKE VEH W/O OWN CONSENT/VEH THEFT
550	TAKE VEH W/O OWN CONSENT/VEH THEFT
551	OBSTRUCT/ETC PUBLIC OFFICER/ETC
552	POSSESS CONTROLLED SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA USE/UNDER INFLUENCE CONTROL SUBST
553	DRIVE W/O LICENSE CONVICTION

ALIEN	CONVICTION(S)
554	DRIVE W/LIC SUSP/REVOKE/CANC 8 USC 1325 ILLEGAL ENTYR (M)
555	LARCENY
556	RESISTING OFFICER
557	RECKLESS DRIVING
558	DUI ALCOHOL/0.08 PERCENT
559	DUI ALCOHOL/0.08 PERCENT DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
560	DRIVING WHILE INTOXICATED
561	FORGERY-OFFERS FORGED INSTRUM/TAKING IDENTITY OF ANOTHER/CRIM IMPERSONATION-FALSE ID
562	RESISTING OFFICER TRESPASSING
563	OPERATING - LICENSE SUSPENDED, REVOKED, DENIED
564	DUI ALCOHOL/DRUGS
565	INFLICT CORPORAL INJ SPOUSE/COHAB
566	DRIVING WHILE INTOXICATED
567	DISORDERLY CONDUCT PROBATION VIOLATION
568	ILLEGAL ENTRY
569	OBSTRUCT/ETC PUBLIC OFFICER/ETC
570	TRESPASS: PRIVATE PROPERTY
571	BATTERY
572	NO ARREST RECEIVED HIT AND RUN:PROPERTY DAMAGE DRIVE W/O LICENSE
573	DRIVE WHILE LIC SUSPEND/ETC DUI ALCOHOL/0.08 PERCENT
574	BURGLARY
575	POSSESS CONTROLLED SUBSTANCE
576	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
577	NO ARREST RECEIVED OBSTRUCT/ETC PUBLIC OFFICER/ETC
578	CHILD/VUL ADULT ABUSE-INTENT
579	ILLEGAL ENTRY
580	EXTREME DUI-BAC .15-.20
581	DRIVE W/LIC SUSP/REVOKE/CANC
582	POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA POSS MARIJUANA 28.5- GRAMS FELON/ADDICT POSS/ETC FIREARM/POSSESS NARC CONTROL SUBSTANCE
583	DISORDERLY CONDUCT:INTOX DRUG/ALCOH BATTERY

ALIEN	CONVICTION(S)
584	NO ARREST RECEIVED CHARGE NOT SPECIFIED
585	DRIVING WHILE INTOXICATED W/CHILD UNDER 15 YOA
586	FALSE ID TO SPECIFIC PEACE OFFICERS
587	POSSESS CONTROLLED SUBSTANCE
588	NO ARREST RECEIVED DUI ALCOHOL/DRUGS DUI ALCOHOL/0.08 PERCENT DRIVE W/O LICENSE DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL DRIVE:LIC SUS/ETC:DUI/RFUSE TST
589	DRIVE W/O LICENSE
590	DUI ALCOHOL
591	BURGLARY:FIRST DEGREE PARTICIPATE IN CRIM STREET GANG PROBATION VIOL:REARREST/REVOKE
592	NO ARREST RECEIVED SEE COMMENT FOR CHARGE INFLECT COPORAL INJ SPOUSE/COHAB/VIOL PROTECT ORD:DOMESTIC:W/PR
593	RESISTING OFFICER
594	NONMOVING TRAFFIC VIOL
595	NO ARREST RECEIVED DRIVE W/O LICENSE
596	DUI ALCOHOL/0.08 PERCENT
597	DUI ALCOHOL/0.08 PERCENT
598	RECKLESS DRIVING
599	OPERATING - NO LICENSE/MULTIPLE LICENSES
600	OPERATING - LICENSE SUSPENDED, REVOKED, DENIED
601	OPERATING-NO LICENSE FOR THREE YEARS 1ST OFFENSE
602	MALICIOUS DESTRUCTION OF PERSONAL PROPERTY-\$200
603	FALSE IDENTIFICATION TO PEACE OFFICER/DRIVE:LIC SUS/ECT:DUI/RFUSE TST DRIVE:LIC SUS/ETC:DUI/RFUSE TST FALSE ID TO SPECIFIC PEACE OFICERS BENCH WARRANT:FTA:MISDEMEANOR CHARGE DUI ALCOHOL
604	DRIVE WHILE LIC SUSPEND
605	BURGLARY BURGLARY:SECOND DEGREE CONSPIRACY:COMMIT CRIME
606	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
607	OBSTRUCT/ETC PUBLIC OFFICER/ETC VIO CRT ORD TO PREVNT DOMESTC VIOL
608	DUI ALCOHOL/0.08 PERCENT/DRIVE:LIC SUS/ETC:DUI/RFUSE TST
609	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
610	GRAND LARCENY < \$3500

ALIEN	CONVICTION(S)
611	DRIVING WHILE INTOXICATED EVADING ARREST DETENTION RESIST ARREST SEARCH OR TRANSP
612	VIO CRT ORD TO PREVNT DOMESTC VIOL
613	NO ARREST RECEIVED DRIVE W/O LICENSE
614	SHOW ON VEH/GIVE OFFICER UNLAWF REG DRIVE W/O LICENSE
615	TRESPASSING
616	THEFT BY UNLWF TAKING OR DISPO FALSE IDENT TO LAW ENFORCEMENT
617	THEFT-FALSE REPRESENTATION
618	POSSESS DRUG PARAPHERNALIA
619	OPERATE W/O CARRYING LICENSE
620	SF-946.41 - OBSTRUCTING SF-947.01 - DISORDERLY CONDUCT
621	RESISTING OR OBSTRUCTING AN OFFICER
622	OPERATING WHILE UNDER INFLUENCE
623	POSSESSION OF MARIJUANA OBSTRUCTING OFFICER
624	OPERATE W/O CARRYING LICENSE
625	11.947.01 DISORDERLY CONDUCT
626	RESISTING OR OBSTRUCTING AN OFFICER
627	OPERATING WHILE REVOKED
628	RECKLESS DRIVING
629	DUI .08 ALCOHOL:CAUSE BODILY INJ
630	DUI ALCOHOL
631	DUI ALCOHOL/0.08 PERCENT DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
632	DUI ALCOHOL/0.08 PERCENT/DRIVE:LIC SUS/ETC:DUI:SPEC VIOL
633	RECKLESS DRIVING
634	THEFT (484)
635	TAKE VEH W/O OWN CONSENT (10851 (A) VC)
636	INFLICT CORPORAL INJ ON SPOUSE/COHAB WILLFUL CRUELTY TO CHILD LOCAL ORDINANCE VIOLATION
637	RESISTING OFFICER
638	RECKLESS DRIVING TO ENDANGER DWI - LEVEL 4
639	LARCENY
640	INJURY TO PERSONAL PROPERTY RECKLESS DRIVING TO ENDANGER RECKLESS DRVG-WANTON DISREGARD HIT/RUN LEAVE SCENE PROP DAM
641	8 USC 1325A1 ENTRY WITHOUT INSPECTION, TIME OR PLACE NOT DESIGNATED
642	ASSAULT ON A FEMALE

ALIEN	CONVICTION(S)
643	OBTAIN PROPERTY FALSE PRETENSE OBTAIN PROPERTY FALSE PRETENSE
	POSS STOLEN GOODS/PROP (F) OBTAIN PROPERTY FALSE PRETENSE FORGERY OF INSTRUMENT
	POSS STOLEN GOODS/PROP (F) OBTAIN PROPERTY FALSE PRETENSE FORGERY OF INSTRUMENT
	OBTAIN PROPERTY FALSE PRETENSE
	OBTAIN PROPERTY FALSE PRETENSE
644	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL DUI ALCOHOL/0.08 PERCENT CONTEMPT:DISOBEY COURT ORDER/ETC
645	DRUG PARAPHERNALIA-POSSESS/USE DRUG PARAPHERNALIA-POSSESS/USE
646	BURGLARY, (1ST) PETIT LARCENY
647	SHOPLIFTING-REMOVAL OF GOODS
	MARIJUANA-POSSESS/USE
648	TRAFFIC - DWI - OPERATE MOTOR VEHICLE - ALCOHOL
649	EVADING ARREST DETENTION
650	FLEE/ELUDE ARREST W/MV (M)
	RESISTING PUBLIC OFFICER
651	OBSTRUCT/ETC PUBLIC OFFICER/ETC (148(A)(1) PC) OBSTRUCT/ETC PUBLIC OFFICER/ETC (148(A)(1) PC)
652	INTRFERE/RESIST LOITER SCHOOL
653	POSSESS CONTROLLED SUBSTANCE POSSESS UNLAW PARAPHERNALIA
654	BAT:SPOUSE/EX SP/DATE/ETC (243(E)(1) PC) BAT:SPOUSE/EX SP/DATE/ETC (243(E)(1) PC)
	POSSESS/ETC BURGLARY TOOLS
655	DUI ALCOHOL/0.08 PERCENT DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
656	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
657	DISTURBS BY LOUD/UNREASONABLE NOISE
	ILLEGAL SPEED CONTEST
658	POSSESS NARC CONTROL SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA
659	LOUD/UNREASONABLE NOISE
660	DUI ALCOHOL/DRUGS
661	CCW ON PERSON ROBBERY
662	DUI ALCOHOL/0.08 PERCENT

ALIEN	CONVICTION(S)
663	RECKLESS DRIVING
664	POSSESS CONTROLLED SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA
665	CHRG 71,03(D) MC
666	ACT AS DEALR/MANUFACTURER/ETC W/O LIC
667	DRIVE W/O LICENSE (12500(A) VC)
668	CARRY CONCEALED DIRK OR DAGGER
669	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL (14601.2(A) VC
670	PETTY THEFT
671	POSSESS CONTROLLED SUBSTANCE
672	FORGERY INFLICT CORPORAL INJ:SPOUSE/COHAB BATTERY
673	TAKE VEH W/O OWN CONSENT/VEH THEFT
674	ASSAULT WITH FIREARM ON PERSON
675	ENT/ETC NONCOM DWELL:INCIDENT WILLFUL CRUELTY TO CHILD ARSON:PROPERTY
676	FORGE OFFICIAL SEAL
677	POSSESS CONTROLLED SUBSTANCE
678	INFLICT CORPORAL INJ SPOUSE/COHAB
679	DRIVE W/O LICENSE TAKE VEH W/O OWN CONSENT/VEH THEFT
680	OBSTRUCT/RESIST EXECUTIVE OFFICER
681	DUI ALCOHOL/0.08 PERCENT
682	VANDALISM
683	ROBBERY:SECOND DEGREE
684	ASSAULT:W/INTENT TO RAPE
685	NO ARREST RECEIVED DRIVE W/O LICENSE
686	POSS MARIJUANA 28.5- GRAMS RECEIVE/ETC KNOWN STOLEN PROPERTY BURGLARY CONTEMPT:DISOBEY COURT ORDER/ETC USE FALSE CITIZENSHIP/ETC DOCUMENTS RECEIVE/ETC KNOWN STOLEN PROPERTY
687	DUI ALCOHOL/DRUGS DUI ALCOHOL/0.08 PERCENT
688	OBSTRUCT/ETC PUBLIC OFFICER/ETC
689	DRIVE WHILE LIC SUSPEND/ETC
690	NO ARREST RECEIVED TRESPASS:RAILROAD PROPERTY
691	POSSESS NARC CONTROL SUBSTANCE POSSESS UNLAW PARAPHERNALIA
692	NO ARREST RECEIVED DRIVE W/O LICENSE

ALIEN	CONVICTION(S)
693	NO ARREST RECEIVED DRIVE W/O LICENSE
694	NO ARREST RECEIVED DRIVE W/O LICENSE
695	NO ARREST RECEIVED FAIL TO APPEAR AFTER WRITTEN PROMISE
	NO ARREST RECEIVED FAIL TO APPEAR AFTER WRITTEN PROMISE
696	CHRG 459-460(B) PC SECOND DEGREE
697	NO ARREST RECEIVED DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
698	LIC SUSP/ETC:DUI:SPEC VIOL
699	CONTEMPT:VIOL PROTECTIVE ORD/ETC
700	DRIVE WHILE LIC SUSPEND/ETC
	POSSESS CONTROLLED SUBSTANCE
701	NO ARREST RECEIVED DRIVE W/O LICENSE
702	DUI:ALCOHOL/DRUGS
703	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
704	NO ARREST RECEIVED DRIVE W/O LICENSE
705	NO ARREST RECEIVED POSS DRILL/ETC:INT VANDALISM/ETC
706	BURGLARY POSSESS UNLAW PARAPHERNALIA
707	NO ARREST RECEIVED DRIVE WHILE LIC SUSPEND/ETC
708	DUI ALCOHOL/0.08 PERCENT DUI ALCOHOL/DRUGS DRIVE W/O LICENSE
	NO ARREST RECEIVED DRIVE:LIC SUS/ETC:DUI/RFUSE TST
709	DUI ALCOHOL/DRUGS DUI ALCOHOL/0.08 PERCENT DRIVE W/O LICENSE
710	NO ARREST RECEIVED DISORDERLY CONDUCT:PROSTITUTION
711	CONTEMPT:VIOL PROTECTIVE ORD/ETC
712	1. DRIVER: LIC SUS/ETC:DUI/RFUSE TST; 2. DUI ALCOHOL/0.08 PERCENT
713	NO ARREST RECEIVED DRIVE:LIC SUS/ETC:DUI/RFUSE TST
714	DUI ALCOHOL/0.08 PERCENT
715	DRIVE: LIC SUSP/ETC:DUI:SPEC VIOL
716	GRAND THEFT FROM PERSON
717	8 USC 1325A1 ENTRY WITHOUT INSPECTION, TIME OR PLACE NOT DESIGNATED
718	NONMOVING TRAFFIC VIOL
719	MOVING TRAFFIC VIOL
720	NONMOVING TRAFFIC VIOL
721	DUI ALCOHOL
722	POSSESS CONTROLLED SUBSTANCE
723	DUI ALCOHOL/DRUGS
724	INFLICT CORPORAL INJ SPOUSE/COHAB

ALIEN	CONVICTION(S)
725	DRIVING WHILE LICENSE SUSPENDED OR REVOKED (MISDEMEANOR)
726	1. AGG ASLT-OFFICER; 2. RESIST ARREST-PHYSICAL FORCE
727	POSS <= 1OZ MARIJUANA, (1ST)
728	DRIVE W/LIC SUSP/REVOKE/CANC
729	DUI-LIQUOR/DRUGS/VAPORS/COMBO
730	EXTREME DUI-BAC .15 OR MORE
731	DANGEROUS DRUG VIOLATION
732	AGG DUI-LIC SUSP/REV FOR DUI EXTREME DUI-BAC .15 OR MORE
733	FAIL TO SHOW DRIV LIC OR ID
734	1. THEFT-CONTROL PROPERTY; 2. BURGLARY 2ND DEGREE
735	DRIVE W/LIC SUSP/REVOKE/CANC FAIL TO SHOW DRIV LIC OR ID DRIVE W/LIC SUSP/REVOKE/CANC
736	VIO CS/DRUG/DEV AND COSMETIC ACT
737	1. 8 USC 1182 ALIEN INADMISSIBILITY UNDER SECTIN 212; 2. 8 USC 13251A1 ENTRY WITHOUT INSPECTIN, TIME OR PLACE NOT DESIGNATED
738	DRIVING WHILE LICENSE REVOKED
739	NO LIC
740	NO SEATBELT MOTOR VEHICLE VIOLATION - NO LICENSE OPERATION OF MOTOR VEH WHILE UNDER INFLUENCE OF FAILURE OF OWNER OR OPERATOR OF MOTOR VEHICLE
741	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
742	POSSESS/ETC BURGLARY TOOLS
743	DRIVE W/O LICENSE
744	BATTERY ON PERSON
745	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
746	SEE COMMENT FOR CHARGE SEE COMMENT FOR CHARGE
747	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
748	DRIVE:LIC SUS/ETC:DUI/RFUSE TST
749	DUI ALCOHOL/0.08 PERCENT VIO CRT ORD TO PREVNT DOMESTC VIOL
750	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
751	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
752	NO ARREST RECEIVED DRIVE W/SUSPENDED LICENSE
753	SEE COMMENT FOR CHARGE
754	BATTERY

ALIEN	CONVICTION(S)
755	DRIVE W/O LICENSE
756	DUI ALCOHOL/0.08 PERCENT
757	VIO CRT ORD TO PREVNT DOMESTC VIOL SEE COMMENT FOR CHARGE
758	BATTERY
759	DRIVE W/O LICENSE
760	DUI ALCOHOL/0.08 PERCENT
761	CONTEMPT:VIOL PROTECTIVE ORD/ETC
762	1. HIT AND RUN: PROPERTY DAMAGE; 2. DRIVE: LIC SUS/ETC; DUI/RFUSE TST
763	DRIVE WHILE LIC SUSPEND/ETC
764	DRIVE WHILE LIC SUSPEND/ETC
765	MFG/SALE/ETC LEADED CANE/BILLY/ETC
766	NO ARREST RECEIVED DRIVE W/O LICENSE
767	DUI ALCOHOL/0.08 PERCENT DUI ALCOHOL/DRUGS
768	DUI:ALCOHOL/DRUGS DUI ALCOHOL/0.08 PERCENT DUI ALCOHOL/DRUGS
769	NO ARREST RECEIVED SEE COMMENT FOR CHARGE DRIVE WHILE LICENSE SUSP FOR DU DUI ALCOHOL/DRUGS
770	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
771	GRAND THEFT FROM PERSON PROBATION VIOL:REARREST/REVOKE
772	DRIVE WHILE LIC SUSPEND/ETC
773	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
774	DUI ALCOHOL/0.08 PERCENT L L BATTERY
775	DISTURBS BY LOUD/UNREASONABLE NOISE
776	DUI ALCOHOL/0.08 PERCENT DRIVE WHILE LIC SUSPEND/ETC
777	UNSAFE SPEED:PREVAILING CONDITIONS
778	DRIVING WHILE INTOXICATED BAC >= 0.15
779	FAIL TO IDENTIFY GIVING FALSE/FICTITIOUS INFO
780	FRAUD-IMPERSON LARCENY
781	MOVING TRAFFIC VIOL
782	NONMOVING TRAFFIC VIOL
783	HIT AND RUN NONMOVING TRAFFIC VIOL
784	COCAINE-POSSESS
785	DRUGS - 2ND DEGREE - SALE 3 GRAMS OR MORE -
786	TRAFFIC REGULATION-UNINSURED VEHICLE-OWNER

ALIEN	CONVICTION(S)
787	TRAFFIC - DWI - THIRD-DEGREE DRIVING WHILE SECOND-DEGREE DRIVING WHILE IMPAIRED.
788	DRUGS - POSSESSION OF DRUG PARAPHERNALIA - USE OR BURGLARY-1ST DEG-ASSAULT PERSON IN BULD/ON BURGLARY-1ST DEG-POSS DANGEROUS WEAPON/EXPLOSIVE
789	TRAFFIC - DWI - OPERATE MOTOR VEHICLE - ALCOHOL
790	TRAFFIC - DWI - OPERATE MOTOR VEHICLE UNDER
791	TRAFFIC - DWI - OPERATE MOTOR VEHICLE UNDER
792	ASSAULT IN THE FIFTH DEGREE.
793	DUI OF ALCOHOL OR CONTRL SUBST
794	OBSTRUCT/ETC PUBLIC OFFICER/ETC FORCE/ADW NOT FIREARM:GBI LIKELY
795	NO ARREST RECEIVED DRIVE W/O LICENSE
796	TRANSPORT/ETC CNTL SUB
797	MOTOR VEHICLE VIOLATION - NO LICENSE
798	NO DRIVERS LICENSE/PERMIT
799	UNLAWFUL TRANSPORT OF FIREARMS - ETC. FELONY PENALTIES FOR FIREARMS FELONY
800	TRAFFIC OFFENSE
801	PERMIT UNLIC GAME ON PREMISES GROSS MISD
802	POSS SCH I, II, III, IV C/S, (1ST/2ND)
803	III/DRUG PARAPHERNALIA-POSSESS/USE,FEL
804	AGGRAVATED DUI
805	SHOPLIFTING-REMOVAL OF GOODS DRUG PARAPHERNALIA-POSSESS/USE
806	DUI-LIQUOR/DRUGS/VAPORS/COMBO
807	FORGERY-OFFERS FORGED INSTRUM POSS WPN BY PROHIB PERSON
808	EXTREME DUI-BAC .15-.20
809	DANGEROUS DRUG VIOLATION DANGEROUS DRUG-POSS FOR SALE
810	BESTIAL-SEXUAL CONTC ANIMAL
811	EXTREME DUI-BAC .15 OR MORE
812	AGG DUI-LIC SUSP/REV FOR DUI
813	MARIJUANA-POSSESS/USE
814	DRIVE W/LIC SUSP/REVOKE/CANC
815	DUI-LIQUOR/DRUGS/VAPORS/COMBO
816	DUI W/BAC OF .08 OR MORE DUI-LIQUOR/DRUGS/VAPORS/COMBO
817	AGG DUI-LIC SUSP/REV FOR DUI

ALIEN	CONVICTION(S)
818	AGGRAVATED DUI-INTERLOCK
819	8 USC 1325A1 ENTRY WITHOUT INSPECTION, TIME OR PLACE NOT DESIGNATED
820	ENTRY WITHOUT INSPECTION, TIME OR PLACE NOT DESIGNATED
821	ILLEGAL ENTRY 8 USC 1325 ILLEGAL ENTRY
822	DRIVING WHILE INTOXICATED 2ND
823	LARCENY
824	BATTERY
825	THEFT LESS THAN \$100.00
826	VIO CS/DRUG/DEV AND COSMETIC ACT
827	DWI - FOURTH-DEGREE DRIVING WHILE IMPAIRED;
828	NONMOVING TRAFFIC VIOL
829	BATTERY DRUGS - EQUIP - POSSESS DISORDERLY INTOX
830	NONMOVING TRAFFIC VIOL
831	LARCENY MOVING TRAFFIC VIOL
832	NONMOVING TRAFFIC VIOL
833	DUI OF ALCOHOL OR CONTRL SUBST
834	HIT AND RUN:DEATH OR INJURY
835	THEFT NO ARREST RECEIVED INFL CRPL INJ:SPOUSE/COHAB/DATE
836	COCAINE-POSSESS
837	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
838	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
839	KNOWINGLY DRIVING MOTOR VEHICLE ON SUSPENDED, CANCELED, OR REVOKED REGISTRATION DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
840	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
841	8 USC 1325 ILLEGAL ENTRY
842	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
843	RECKLESS CONDUCT
844	DRIVING WHILE INTOXICATED 2ND ASSAULT CAUSES BODILY INJURY FAMILY MEMBER
845	DRIVING WHILE INTOXICATED 2ND
846	POSSESS CONTROLLED SUBSTANCE
847	NO ARREST RECEIVED DRIVE W/O LICENSE NO ARREST RECEIVED DRIVE W/O LICENSE

ALIEN	CONVICTION(S)
848	POSSESS STOLEN VEHICLE/VESSEL/ETC TAKE VEH W/O OWN CONSENT/VEH THEFT
849	NO ARREST RECEIVED POSSESS UNLAW PARAPHERNALIA FAIL TO APPEAR AFTER WRITTEN PROMISE OBSTRUCT/ETC PUBLIC OFFICER/ETC POSSESS/ETC BURGLARY TOOLS
850	BURGLARY USE/UNDER INFL CONTRLD SUBSTANCE RECEIVE/ETC KNOWN STOLEN PROPERTY
851	ASSAULT WITH FIREARM ON PERSON
852	DUI:ALCOHOL/DRUGS DUI:ALCOHOL/DRUGS DISTURBS BY LOUD/UNREASONABLE NOISE
853	POSSESS CONTROLLED SUBSTANCE
854	THREATEN CRIME WITH INTENT TO TERRORIZE
855	POSSESS STOLEN VEHICLE/VESSEL/ETC
856	POSSESS CONTROLLED SUBSTANCE
857	INFLICT CORPORAL INJ SPOUSE/COHAB RECEIVE/ETC KNOWN STOLEN PROPERTY CONTEMPT:DISOBEY COURT ORDER/ETC
858	DUI ALCOHOL/DRUGS
859	GAMBLING
860	POSSESS CONTROLLED SUBSTANCE
861	ROBBERY
862	NO ARREST RECEIVED INFRACTION VIOLATION POSSESS CONTROLLED SUBSTANCE POSSESS CONTROL SUBSTANCE PARAPHERNA VANDALISM
863	DUI ALCOHOL/DRUGS
864	POSSESS CONTROLLED SUBSTANCE POSS MARIJUANA 28.5- GRAMS
865	NO ARREST RECEIVED DRIVE W/O LICENSE
866	THEFT FAIL TO APPEAR AFTER WRITTEN PROMISE
867	DISORDERLY CONDUCT:INTOX DRUG/ALCOH
868	BURGLARY NO ARREST RECEIVED THEFT
869	NO ARREST RECEIVED DRIVE W/O LICENSE
870	DRIVE W/O LICENSE
871	POSSESS NARC CONTROL SUBSTANCE
872	DUI ALCOHOL/0.08 PERCENT
873	THREATEN CRIME W/INTENT TO TERRORIZE

ALIEN	CONVICTION(S)
874	DUI ALCOHOL/0.08 PERCENT
875	CONTEMPT:DISOBEY COURT ORDER/ETC
876	DRIVE W/O LICENSE
877	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
878	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
879	CONVICTION OCCURRED ON 11/26/2013 FOR INFLICT CORPORAL INJ SPOUSE/COHAB
880	BURGLARY STOLEN PROP-DEAL IN
881	CHRG 14601.5 (VC)
882	CHRG242-243(E)(1) PC
883	DUI ALCOHOL/0.08 PERCENT
	DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL DUI ALCOHOL/DRUGS
	DRIVE: LIC SUSP/ETC:DUI:SPEC VIOL
884	POSSESS CONTROLLED SUBSTANCE
	NO ARREST RECEIVED POSSESS CONTROL SUBSTANCE PARAPHERNA
	POSSESS CONTROLLED SUBSTANCE
	POSSESS CONTROLLED SUBSTANCE
885	POSSESS CONTROLLED SUBSTANCE
	POSSESS CONTROL SUBSTANCE PARAPHERNA
886	POSSESS NARC CONTROL SUBSTANCE
887	BURGLARY
888	DRIVING W/O LICENSE
	DRIVING W/O LICENSE
889	DRIVE W/O LICENSE
890	CHRG 23152 (B) - 23550 VC
891	POSSESS CONTROLLED SUBSTANCE BURGLARY:SECOND DEGREE
892	CONTEMPT:VIOL PROTECTIVE ORD/ETC
893	DRIVE W/O LICENSE
894	CHRG 242-243E (1) PC
895	DUI ALCOHOL/0.08 PERCENT AND DRIVE: LIC SUS/ETC:DUI RFUSE TST
896	FALSE ID TO SPECIFIC PEACE OFICERS
897	DUI ALCOHOL/0.08 PERCENT DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
898	TAMPER WITH VEHICLE
899	PETTY THEFT W/PR JAIL:SPEC OFFENSES
900	DLR/ETC UNDETRIME OWNER:STLN PROP
901	NO ARREST RECEIVED DRIVE W/O LICENSE
902	POSSESS CONTROLLED SUBSTANCE
903	DISORDERLY CONDUCT:INTOX DRUG/ALCOH

ALIEN	CONVICTION(S)
904	BATTERY: SPOUSE/EX SP/DATE/ETC
905	NO ARREST RECEIVED VANDALISM CARJACKING THREATEN CRIME WITH INTENT TO TERRORIZE
906	NO ARREST RECEIVED SEX OFFENDER FAIL REG/ETC
907	POSSESS CONTROLLED SUBSTANCE
908	RECEIVE/ETC KNOWN STOLEN PROPERTY
909	POSSESS CONTROL SUBSTANCE FOR SALE
910	POSSESS CONTROLLED SUBSTANCE
911	FORGE OFFICIAL SEAL POSSESS CNTL SUBSTANCE
912	ENTER/ETC NONCOMMERCIAL DWELLING
913	DUI ALCOHOL/0.08 PERCENT
914	DUI ALCOHOL/0.08 PERCENT AND DRIVE:LIC SUSP/ETC: SPEC VIOL
915	UNLAWFUL USE/ETC:DRIVER LIC
916	INFLECT CORPORAL INJ SPOUSE/COHAB
917	NO ARREST RECEIVED DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
918	POSSESS CONTROLLED SUBSTANCE MFG/SALE/ETC LEADED CANE/BILLY/ETC
919	DUI ALCOHOL/0.08 PERCENT AND DRIVE:LIC SUSP/ETC: SPEC VIOL
920	L&L ACTS W/CHILD:AGE SPECIFIC
921	NO ARREST RECEIVED OWNER ALLOW UNLICENSED OPR VEHICLE
922	DUI ALCOHOL/DRUGS CAUSE BODILY INJ
923	POSS CS PG 3< 28G
924	USE/UNDER INFL CONTRLD SUBSTANCE PETTY THEFT NO ARREST RECEIVED SEE COMMENT FOR CHARGE
925	TAKE VEH W/O OWN CONSENT/VEH THEFT
926	NO ARREST RECEIVED SEE COMMENT FOR CHARGE
927	OBSTURCT/ETC PUBLIC OFFICER/ETC
928	DUI ALCOHOL
929	CARRY CONCEALED DIRK OR DAGGER
930	POSSESS CONTROLLED SUBSTANCE AND MFG/ETC DECEPT GOVT ID/DRVIE LIC
931	MAKE/PASS FICTITIOUS CHECK
932	DRIVE W/O LICENSE
933	POSSESS CONTROLLED SUBSTANCE TRANSPORT/ETC CNTL SUB DRIVE:SUSPENDE/ETC LIC:RECKLESS
934	INFLECT CORPORAL INJ SPOUSE/COHAB

ALIEN	CONVICTION(S)
935	DRIVING WITH SUSPENDED/REVOKED DRIVER'S LICENSE FAILURE OF OWNER OR OPERATOR OF MOTOR VEHICLE NO SEATBELT
936	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
937	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
938	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
939	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
940	NONMOVING TRAFFIC VIOL
941	HARASSMENT
	CRIMINAL MISCHIEF
942	DISORDERLY CONDUCT
943	8 USC 1325 ILLEGAL ENTRY (M)
944	ACCIDENT INV DEATH/PERS INJURY
945	DRIVING WHILE INTOXICATED
946	DWI - LEVEL 4
947	DRIVING WHILE INTOXICATED 2ND
948	DRIVING WHILE LICENSE SUSPENDED OR REVOKED (MISDEMEANOR)
949	CONTRIBUTING DEL OF JUVENILE
950	DISORDERLY CONDUCT
951	BURGLARY POSSESS CNTL SUBSTANCE
952	BURGLARY:SECOND DEGREE
	POSSESS NARC CONTROL SUBSTANCE
953	DUI ALCOHOL/0.08 PERCENT DRIVE:LIC SUSP/ETC:DUI:SPEC VIOL
954	NO ARREST RECEIVED DRIVE W/O LICENSE
955	DUI ALCOHOL/0.08 PERCENT
956	DRIVE W/SUSPENDED LICENSE
957	BURGLARY
958	DUI ALCOHOL/DRUGS
959	USE/UNDER INFLUENCE CONTROL SUBST
960	INFLECT CORPORAL INJ SPOUSE/COHAB CHILD CRUELTY:POS INJURY/DEATH PROBATION VIOL:REARREST/REVOKE DRIVE W/O LICENSE UNSAFE SPEED:PREVAILING CONDITIONS FAIL PROVE FIN RSP:PO REQUEST FAIL TO APPEAR:WRITTEN PROMISE LOCAL ORDINANCE VIOLATION
961	POSSESS CONTROLLED SUBSTANCE FALSE ID TO SPECIFIC PEACE OFFICERS DISORDERLY CONDUCT:INTOX DRUG/ALCOH BURGLARY:SECOND DEGREE
	POSSESS CONTROLLED SUBSTANCE BURGLARY:SECOND DEGREE
962	DUI:ALCOHOL/DRUGS

ALIEN	CONVICTION(S)
963	URINATING IN PUBLIC
964	DISP / NO COMPLAINT FIELD
965	SHOPLIFTING-REMOVAL OF GOODS
966	FAIL TO NOTIFY/STRIKE FIXTURE
967	DISP / NO COMPLAINT FIELD
968	FAIL TO SHOW DRIV LIC OR ID
969	DUI-LIQUOR/DRUGS/VAPORS/COMBO
970	VIOLATION OF PROMISE TO APPEAR
971	CRIMINAL TRESPASS 2ND DEG
972	DISPO/ COURT DISMISSAL
973	AGG DUI-LIC SUSP/REV FOR DUI
974	AGGRAVATED ASSAULT DANGEROUS DRUG-POSS/USE
975	METH-MFG PHYS INJURY LT 15 YR
976	MARIJUANA-POSSESS/USE
977	INDECENT EXPOSURE
978	DRIVE W/LIC SUSP/REVOKE/CANC
979	ASSAULT-INTENT/RECKLESS/INJURE
980	TRAFFIC REGULATION - CRIMINAL PENALTY FOR FAILURE
981	TRAFFIC REGULATION - DRIVER MUST CARRY PROOF OF
982	DRIVING WHILE INTOXICATED 2ND
983	DRIVING WHILE INTOXICATED BAC >= 0.15
984	DISTURB PEACE
985	NARCOTIC DRUG-POSSESS/USE
986	CARRY DEADLY WPN < 21 YOA
987	DRIVE UNDER INFLUENCE:-21 DRIVE WHILE LIC SUSPEND/ETC
988	DUI:ALCOHOL/DRUGS
989	POSSESS CONTROLLED SUBSTANCE
990	DUI ALCOHOL/DRUGS
991	LEWD OR LASCIV ACTS W/CHILD UNDER 14
992	FORCE/ADW NOT FIREARM:GBI LIKELY
993	DUI ALCOHOL/0.08 PERCENT
994	CONTEMPT:CRT:DISORD/ETC BEHAVIOR
995	DUI ALCOHOL/0.08 PERCENT
996	DRIVING WITHOUT A VALID LICENSE (MISDEMEANOR)
997	BAT:SPOUSE/EX SP/DATE/ETC
998	FALSE ID TO SPECIFIC PEACE OFICERS
999	VIO CRT ORD TO PREVNT DOMESTC VIOL

1025

ALIEN	CONVICTION(S)
1000	DOMESTIC ABUSE ACT.

Notes:

¹Convictions are taken directly from the rap sheet located in the Federal Bureau of Investigation's National Crime Information Center (NCIC). As a result, some convictions may contain entries such as "No Arrest Received" or "See Comment For Charge." Additional detail about the related crime(s) for these cases may be found either in local systems or courthouses.

Reagan and Bush Offer No Precedent for Obama's Amnesty Order

Not only were past executive actions smaller, they didn't work.

DAVID FRUM | NOV 18 2014, 5:26 PM ET



“What about Reagan in 1987? And George H.W. Bush in 1990?”

This has become a favorite Democratic and center-left rebuttal to Republicans angry at reports that President Obama may soon grant residency and working papers to as many as 5 million illegal aliens. If Obama acts, he'd rely on precedents set by Republican predecessors. Surely that should disbar today's Republicans from complaining?

Surely not, and for four reasons.

1) Reagan and Bush acted in conjunction with Congress and in furtherance of a congressional purpose. In 1986, Congress passed a full-blown amnesty, the Simpson-Mazzoli Act, conferring residency rights on some 3 million people. Simpson-Mazzoli was sold as a “once and for all” solution to the illegal immigration problem: amnesty now, to be followed by strict enforcement in future. Precisely because of their ambition, the statute's authors were

confounded when their broad law generated some unanticipated hard cases. The hardest were those in which some members of a single family qualified for amnesty, while others did not. Nobody wanted to deport the still-illegal husband of a newly legalized wife. Reagan's (relatively small) and Bush's (rather larger) executive actions tidied up these anomalies. Although Simpson-Mazzoli itself had been controversial, neither of these follow-ups was.

Related Story



Five Reasons Obama Shouldn't
Declare Amnesty

Executive action by President Obama, however, would follow not an act of Congress but a prior executive action of his own: his suspension of enforcement against so-called Dreamers in June 2012.

A new order would not further a congressional purpose. It is intended to overpower and overmaster a recalcitrant Congress. Two presidents of two different parties have repeatedly called upon Congress to pass a second large amnesty. Congress has repeatedly declined. Each Congress elected since 2006 has been less favorable to amnesty than the previous one, and the Congress elected this month is the least favorable of all. Obama talks as if Congress's refusal to fall in with his wishes somehow justifies him in acting alone. He may well have the legal power to do so. But it hardly enhances the legitimacy of his action. Certainly he is not entitled to cite as precedent the examples of presidents who *did* act together with Congress.

2) Reagan and Bush legalized much smaller numbers of people than Obama is said to have in mind. While today's advocates cite a figure of 1.5 million people among those potentially affected by Bush's order, only about 140,000 people ultimately gained legal status this way, according to U.S. Immigration and Customs Enforcement data as reviewed by Mark Krikorian of the Center for Immigration Studies. (Updated: Krikorian reconsidered the numbers and now concludes the true figure is even lower—less than 50,000.) Obama's June 2012 grant of residency to the so-called "Dreamers", people who were brought to the United States illegally as children, could potentially reach 1.4 million people. His next round of amnesty, which is advertised as benefiting the parents of the Dreamers and other illegal-alien parents of U.S. resident children, could reach as many as 5 million people.

Put it another way: If all the potential of Obama's past and next action is realized, he would—acting on his own authority and in direct contravention of the wishes of Congress—have granted residency and work rights to more

thandouble the number of people amnestied by Simpson-Mazzoli, until now the most far-reaching immigration amnesty in U.S. history.

As the philosopher liked to point out, at a certain point, a difference in quantity becomes a difference in quality.

3) The Reagan-Bush examples are not positive ones. The 1986 amnesty did not work as promised. It was riddled with fraud. The enforcement provisions were ignored or circumvented. Illegal immigration actually increased in the years after the amnesty. The supposed "once and for all" solution almost immediately gave rise to an even larger version of the original problem.

The argument that "Reagan and Bush did it," is essentially an argument that future generations should not learn from the errors of previous generations. With the advantage of experience, it is clear that their decisions did not produce the desired result, and actually greatly worsened the problem they sought to solve. Let's not repeat their mistake.

4) The invocation of the Reagan and Bush cases exemplifies the bad tendency of political discussion to degenerate into an exchange of scripted talking points. "Oh yeah? Well, this guy you liked also did this thing you don't like!" Is that really supposed to convince anybody? What we have here is not a validation of the correctness of President Obama's action. It's the shaking of a fetish, an effort to curtail argument rather than enlighten it.

It's a style of argument borrowed from the late-night cable-comedy shows, in which a clip of somebody saying something at some point in the past is supposed to estop that person—or anybody in any way connected to him, or supportive of him, or even mostly but not entirely admiring of him—from ever saying anything different in the future. But a zinger is not a rebuttal. In this case, with all the huge differences between Obama's situation and those of his predecessors, it does not even zing.

[Jump to Comments \(348\)](#)



DAVID FRUM is a senior editor at *The Atlantic* and the chairman of Policy Exchange. In 2001-02, he served as a speechwriter for President George W. Bush.

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U.S. Department of Justice
Office of the Inspector General

ABBREVIATED REPORT OF INVESTIGATION

SUBJECT Unidentified		CASE NUMBER 2013-006191	
OFFICE CONDUCTING INVESTIGATION Cyber Investigations Office		DOJ COMPONENT Unknown	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office	CIO	<input type="checkbox"/> OPEN	<input type="checkbox"/> OPEN PENDING PROSECUTION
<input checked="" type="checkbox"/> AIGINV		<input type="checkbox"/> PREVIOUS REPORT SUBMITTED:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<input type="checkbox"/> Component		Date of Previous Report:	
<input type="checkbox"/> USA			
<input type="checkbox"/> Other			

SYNOPSIS

This DOJ Office of the Inspector General (OIG) investigation was initiated based on a complaint submitted to the OIG Hotline in April 2013 by Sharyl Attkisson, a private citizen and CBS News Correspondent at the time. Attkisson alleged that in December 2012 her personal Apple iMac computer and two CBS News laptop computers used by her were remotely compromised by an unknown intruder in order to obtain information relating to her reporting on events such as Operation Fast & Furious and the terrorist attack on the U.S. compound in Benghazi, Libya. Attkisson alleged that special software was used for the intrusion that is only available to the Federal Bureau of Investigation (FBI) and other U.S. Government Intelligence Agencies. Attkisson claimed that former White House Associate [REDACTED] directed either the FBI or an Intelligence Agency to monitor her computers.

Attkisson further reported to the OIG that a technician hired by CBS News came to her residence on February 2, 2013, and examined her personal iMac for a period of time. She stated that the CBS technician told her there was evidence of "remote access" on her personal iMac. Attkisson also informed the OIG that CBS News hired a computer forensic examination company, [REDACTED] to examine the CBS News laptop computers that had been used by Attkisson. Attkisson told the OIG that the [REDACTED] report concluded her CBS News laptop computers were compromised.

At the OIG's request, the FBI searched its case management system to determine whether Attkisson was the subject of any FBI investigation. The FBI informed the OIG that Attkisson was not and had not previously been under investigation by the FBI. Before issuing this report, the OIG confirmed with FBI that there was no change to Attkisson's status.

DATE	January 23, 2015	SIGNATURE	[REDACTED]
PREPARED BY SPECIAL AGENT			
DATE	January 23, 2015	SIGNATURE	[REDACTED]
APPROVED BY SPECIAL AGENT IN CHARGE Keith A. Bonanno			

The OIG asked Attkisson for consent to image and analyze her personal iMac, and for consent to contact CBS News regarding her allegations so that we could request from CBS News a copy of the forensic report prepared by [REDACTED] and access to the two CBS News laptop computers used by Attkisson. In early June 2013, shortly after receiving Attkisson's consent, the OIG's General Counsel contacted an attorney for CBS News to inform her of the complaint that the OIG received from Attkisson and to request access to Attkisson's laptop computers at CBS News and for any forensic report that CBS News possessed. The CBS News attorney took the request under consideration and said she would let us know the company's position.

On June 14, 2013, shortly after the OIG contacted CBS News, CBS News issued a public statement reporting, among other things, that a cyber security firm hired by CBS News "has determined through forensic analysis that Sharyl Attkisson's computer was accessed by an unauthorized, external, unknown party on multiple occasions in late 2012. Evidence suggests this party performed all access remotely using Attkisson's accounts. While no malicious code was found, forensic analysis revealed an intruder had executed commands that appeared to involve search and exfiltration of data. This party also used sophisticated methods to remove all possible indications of unauthorized activity, and alter system times to cause further confusion."

In January 2014, CBS News advised the OIG that it was declining the OIG's request that it voluntarily enable the OIG to examine and analyze the CBS News laptop computers used by Attkisson. CBS News also informed the OIG that it was declining the OIG's request that it voluntarily provide the OIG with a copy of [REDACTED] forensic examination report.

In December 2013, in response to a request made by the OIG about six months earlier, Attkisson contacted the OIG to inform us that she would agree to provide the OIG with her personal iMac computer so that the OIG could conduct a forensic examination of it. The OIG thereafter received the iMac computer from Attkisson in January 2014 and performed a forensic analysis of it.

The OIG's forensic examination of Attkisson's personal iMac located numerous artifacts indicating that a live search of the iMac's system logs had been conducted on February 2, 2013. This was the same date that Attkisson told the OIG a technician hired by CBS News conducted a forensic examination of her iMac computer. The OIG's forensic examination further found what appeared to be searches and queries performed by an examiner with knowledge of computer logs; however, it appeared that the searches and queries were conducted while the computer was in operation and without write protecting the hard drive, which altered file information. This method of forensic examination is not forensically sound nor is it in accordance with best practices. This activity also could have deleted and overwritten log data on the iMac, which could have obscured potential evidence of unauthorized access.

The OIG computer forensic analysis of Attkisson's personal iMac computer did not find evidence of remote or unauthorized access. The analysis determined that the computer's system logs that we were able to examine were complete and unaltered except for time and date changes that occurred in February 2013, approximately two weeks after the live examination was performed. Further, the OIG's analysis found that the time and date changes were executed by a user who had physical access to the computer, and were not done remotely.

In order to determine what actions may have been taken by the forensic examiner while analyzing Attkisson's iMac computer, the OIG contacted counsel for CBS News in February 2014 to see if it would provide the OIG with a copy of only that portion of the forensic examination that related to Attkisson's personal iMac computer. Counsel for CBS News informed the OIG that it would take the OIG's request under consideration. The following month, the OIG was contacted by counsel for CBS News and advised that CBS News did not have any forensic work performed on Attkisson's personal computer, so its forensic report would not contain any information relevant to our inquiry. Attkisson, however, continued to stand by her statement to the OIG that CBS News sent a technician to her house to examine her iMac computer on February 2, 2013.

Attkisson told the OIG that she hired a forensic technician who also conducted an examination of her personal iMac computer and claimed that this forensic examination found that the iMac contained evidence of remote access. Separate from the DOJ OIG's interactions with Attkisson, we were contacted by the [REDACTED] about an allegation, resulting from a finding of the forensic technician hired by Attkisson, that an Internet Protocol (IP) address registered to the [REDACTED] was responsible for the unauthorized access into her personal computer, which the [REDACTED] was investigating pursuant to a request from Senator Tom Coburn. [REDACTED] informed the DOJ OIG that it determined the IP address identified by Attkisson's technician was never an active IP address on the [REDACTED] network. [REDACTED] requested DOJ OIG to search for the IP address as well as any [REDACTED] IP addresses on Attkisson's personal iMac computer. Our search of Attkisson's iMac computer did not locate the IP address identified by Attkisson's technician. Other IP addresses assigned to the [REDACTED] that we located on the computer appear to have come from common, non-suspicious sources such as internet cookies, Google searches, and web access to the [REDACTED] shipping web site. No references to the IP addresses were found in logs or other areas on Attkisson's iMac computer that would record remote access originating from the [REDACTED] or otherwise.

In June and July 2014, the OIG requested that Attkisson provide the OIG with a copy of the report completed by the technician she hired to examine her iMac computer, or to allow the OIG to speak with Attkisson's technician. After consulting with her attorney, Attkisson told the OIG that "My attorney says our material isn't yet in a form that's ready to share." The OIG requested a copy of this report again in October 2014. Attkisson responded that she would ask her attorney, but we have received no further communication from her regarding this request and it remains outstanding.

Attkisson did provide the OIG with recorded videos showing the screen of her CBS News issued laptop, which she stated were evidence of alleged unauthorized access. One video showed what was determined to be a standard error prompt. A second video showed text of a document she was drafting on a Macbook laptop being deleted without any apparent action by the user of the computer (Attkisson). However, the video of text being deleted from a document appeared to be caused by the backspace key being stuck, rather than a remote intrusion.

Lastly, Attkisson reported to the OIG that a "suspicious" cable was attached to her Internet Service Provider's connection box installed on her house. She opined to the OIG that perhaps this cable was being used to "tap" her house. Further investigation by the OIG revealed that the cable was a common cable used by the provider and could not be used to monitor or otherwise affect the phone or internet service at her residence.

Conclusion

Attkisson told the OIG that forensic examinations of computers used by her by technicians hired by her and separately by CBS News had determined that these computers were remotely compromised. Attkisson and CBS News have not permitted the OIG to review the reports of their respective forensic examiners, and CBS News has declined to allow the OIG to forensically examine the CBS News computers that Attkisson used during her employment. The OIG's forensic examination of Attkisson's personal iMac computer found no evidence of remote intrusion although we did find numerous artifacts indicating that a live search of the iMac's system logs had been conducted by a technician on February 2, 2013. This activity also could have deleted and overwritten log data on the iMac, which could have obscured potential evidence of unauthorized access. The OIG's investigation was not able to substantiate the allegations that Attkisson's computers were subject to remote intrusion by FBI, other government personnel, or otherwise.

The OIG has completed its investigation into this matter and it is now closed, subject to reopening in the event additional information or materials are made available for our review.

**Statement for the Record of
Stan Marek, President and CEO of Marek Family of Companies**

U.S. Senate Committee on the Judiciary

**"Keeping Families Together: The President's Executive Action on
Immigration and the Need to Pass Comprehensive Reform"**

December 10, 2014

My name is Stan Marek, and I am the President and CEO of the Marek Family of Companies in Houston, Texas. I would like to thank the Committee for the opportunity to submit a statement for the record for this important hearing on the President's executive action and the need for broad common sense immigration reform.

I have been in the construction industry my whole life just like my great grandfather who built the castles in Olomouc, Czech Republic. He left the Czech Republic to find the freedom offered by emigrating to America. My father and his brothers started our company 75 years ago with the sons of immigrant farmers from Central Texas towns such as Yoakum, Hallettsville and Shiner. Our company is now in seven cities, and we employ roughly 1,000 workers in Houston alone.

President Obama's executive action will benefit many of our former employees – individuals with U.S. citizen children that we have terminated over the years in compliance with our nation's labor and immigration laws. The President's actions provide happiness for these employees. They will be welcome to return as soon as the president's executive action is effective, and they receive work authorization. Many have kept in touch with me and told us sad stories of low pay, long hours with no overtime and no insurance if hurt. They are ready to rejoin a company that pays by the hour, pays payroll taxes, and cares about their employees.

I will be particularly happy to be able to hire a stellar employee who I had to let go when we learned he was undocumented. He started working for our company thirteen years ago sweeping floors at 18 and worked his way up. He moved to the United States with his mother at the age of eleven and went to school and worked from a young age.

At the age of eighteen he got married, and he now has four U.S. born children with his wife, ages 15, 13, 9 and 4. His mother, now a legal permanent resident, filed a visa petition for him in 2001, but since she is not a citizen the process has been lengthy, and they are still waiting on USCIS to process the application. His wife, who is also undocumented, was recently terminated from her job for being undocumented.

The president's executive action will allow both of them to apply for Deferred Action for Parental Accountability (DAPA). He will be able to come back to work for us, where we can guarantee him fair pay and health benefits, and we gain a skilled, experienced, and loyal worker. He told me that when he heard President Obama's executive action and he saw his fifteen year old daughter jumping with joy, he couldn't hold back the tears - he could finally stop fearing

deportation and being separated from his children. He has been living here since he was 11, paying taxes since 1999, has 5 U.S. citizen siblings and 4 U.S. born children- he has been waiting to become a legal permanent resident since 2001 and executive action will give him the opportunity to come to work for us and live without the constant fear of deportation.

The President took an important step to stabilize our workforce and keep families together, but we still need sensible immigration reform that will make these positive changes permanent.

BOARD OF COMMISSIONERS

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 CLERK TO THE BOARD

RESOLUTION SUPPORTING THE NOMINATION OF
 LORETTA E. LYNCH TO BE THE NEXT
 ATTORNEY GENERAL OF THE UNITED STATES

WHEREAS, Ms. Loretta Elizabeth Lynch has had a distinguished career as an attorney, a partner in the distinguished international law firm of Hogan & Hartson (later Hogan Lovells), and as a United States Attorney; and

WHEREAS, Ms. Loretta Lynch earned a Bachelor of Arts in English and American Literature from Harvard College, in addition to a Juris Doctor from Harvard Law School; and

WHEREAS, Ms. Loretta Lynch joined the staff of the Office of the United States Attorney for the Eastern District of New York in 1990, and served with distinction becoming Chief of the Long Island office in 1994, and later, Chief of the Brooklyn office in 1998; and

WHEREAS, Ms. Loretta Lynch was nominated by President Barack Obama in 2010 to serve in her current position as the United States Attorney for the Eastern District of New York; having previously served the Eastern District of New York from 1999-2001 after being nominated by President William J. Clinton; and

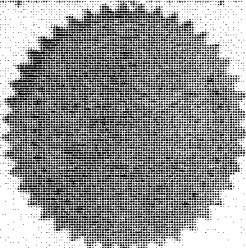
WHEREAS, Ms. Loretta Lynch is an experienced prosecutor with a long history of litigating political corruption, terrorism and organized crime cases and has been praised for "substance not flash"; and

WHEREAS, President Barack Obama has nominated Ms. Loretta Lynch to serve as the 83rd United States Attorney General; and

WHEREAS, Being a North Carolina native born in Greensboro, NC, Ms. Loretta Lynch's family tree reaches deep into the soil of Eastern Carolina which includes her father, Reverend Lorenzo Lynch, Sr. having been raised in Oak City, NC off of NC 903.

NOW, BE IT RESOLVED THAT the Martin County, NC Board of Commissioners strongly supports the nomination of Ms. Loretta Elizabeth Lynch as the next Attorney General of the United States, and urges the members of the United States Senate to seriously weigh her professionalism and career accomplishments, and confirm her appointment in an expeditious manner.

Adopted this 7th day of January 2015.




 Ronnie Smith, Chairman of the Board


 Marion B. Thompson, NCCC
 Clerk to the Board

ADDITIONAL SUBMISSIONS FOR THE RECORD

A list of material and links can be found below for Submissions for the Record not printed due to voluminous nature, previously printed by an agency of the Federal Government, or other criteria determined by the Committee:

Attorney General's Advisory Committee, December 19, 2014, working draft agenda—redacted,

Part 1:

[https://www.judiciary.senate.gov/imo/media/doc/AGAC%20\(12-19-2014\)_Part1.pdf](https://www.judiciary.senate.gov/imo/media/doc/AGAC%20(12-19-2014)_Part1.pdf)

Part 2:

[https://www.judiciary.senate.gov/imo/media/doc/AGAC%20\(12-19-2014\)_Part2.pdf](https://www.judiciary.senate.gov/imo/media/doc/AGAC%20(12-19-2014)_Part2.pdf)

Part 3:

[https://www.judiciary.senate.gov/imo/media/doc/AGAC%20\(12-19-2014\)_Part3.pdf](https://www.judiciary.senate.gov/imo/media/doc/AGAC%20(12-19-2014)_Part3.pdf)

Part 4:

[https://www.judiciary.senate.gov/imo/media/doc/AGAC%20\(12-19-2014\)_Part4.pdf](https://www.judiciary.senate.gov/imo/media/doc/AGAC%20(12-19-2014)_Part4.pdf)

Part 5:

[https://www.judiciary.senate.gov/imo/media/doc/AGAC%20\(12-19-2014\)_Part5.pdf](https://www.judiciary.senate.gov/imo/media/doc/AGAC%20(12-19-2014)_Part5.pdf)

Legal and Administrative Management Evaluation, United States Attorney's Office, Eastern District of New York, January 23, 2015, draft report—redacted:

https://www.judiciary.senate.gov/imo/media/doc/EARS_Redacted%20FINAL.pdf

